ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1868.

WITH INDEX.

VOL. VII.

Published by the Authority of the Governor-General.

CALCUTTA:
OFFICE OF SUPERINTENDENT OF GOVERNMENT PRINTING.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Prasanna Kumára Thákúr, C. S. I.
The Hon'ble Khwája 'Abd-ul-ghani.

The Hon'ble Khwája 'Abd-ul-ghani made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

PEPPER DUTY (COCHIN) BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Cochin), said that in the year 1861 the Native States of Travancore and Cochin had thought fit to give up the monopoly on pepper, and to impose, instead, a duty on all pepper exported from their ports; but the good intentions of those Governments would have been entirely frustrated if the British ports in those States were continued to be maintained as free ports. The British Government therefore, by arrangement, undertook to levy the same duty on pepper exported from the British port of Cochin as was levied in the ports of the Native States. The British Government had no interest whatever in the matter, and merely collected the duty for the purpose of making it over to the Native Governments after deducting the cost of collection. No provision was made in Act No. III of 1861 for effecting

a corresponding reduction of duty in the British port of Cochin in the event of the Native States reducing the rate of duty on the export of pepper. It was considered by the Government of the day preferable to provide for such a contingency when it should arise by legislative enactment. The contingency had now arisen, for the Native Governments had reduced the export duty leviable in their ports from fifteen rupees to nine rupees, and they had now requested the Government of Madras to move the Supreme Government for an Act of the legislature to effect a corresponding reduction of the export duty leviable in the British port of Cochin. This the Government of India had no objection to do, and the object of the Bill was simply to make the export duty at the British port correspond with the reduced rate now levied by the Native States; but as it was to be hoped that, in course of time, there would be a still further reduction of that duty, provision had been made in the Bill to enable the Government of Madras, by order in council, to make further reductions corresponding with any future reductions which the Native Governments might find it to their interest to make. The Bill was founded on the principle of the comity of nations, the British Government being desirous not to defeat the fiscal arrangements of neighbouring Native States with which they were in amity.

The Motion was put and agreed to.

PANJÁB APPEALS' BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to amend the law relating to appeals in the Panjáb and its dependencies, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that he had obtained leave at the end of last session to bring in this Bill. The principal object which he had in view was to correct a mode of procedure relating to appeals which had been introduced into the former system by one of the provisions of the Panjáb Chief Court Act, No. IV of 1866, and had given rise to much perplexity and inconvenience; for while, by the civil procedure in force in the Panjáb, a regular appeal was allowed from each lower Court to the Court next above it, through all the grades of Courts, section 17 of the Panjáb Chief Court Act provided that all special appeals from the decrees of Civil Courts, of whatever grade, should lie to and be heard by the Chief Court only, and not by any other Court. Now a regular appeal, as most of the Members of the Council were doubtless aware, was an appeal in which both law and facts might be questioned; while a special appeal according to the Code of Civil Procedure, only took place when points of law were in dispute, and lay only from a decision passed in regular appeal. But by the Panjáb appeal system, there was no such thing as a special appeal: the

whole case might be re-opened, either on a second or even third appeal, according to the interpretation put by the Chief Court, upon the conflicting provisions of the Panjáb appeal system and section 17 of the Panjáb Chief Court Act, in a circular issued by the Court on the subject. If the points in dispute related to both law and facts, or to facts only, the appeal from the decision of the lowest appellate Court—that of the Deputy Commissioner—lay to the Court of the Commissioner, but if the points in dispute related to law only, then the appeal lay to the Chief Court; but instead of being presented in the first instance to the Chief Court, it had to be presented to the Commissioner, who was required to consider the grounds urged in the appeal, as to whether the appeal was one which lay to the Chief Court under the conditions which he had described, and if so, he must forward it to the Chief Court for decision. The Council, MR. BRANDRETH had no doubt, would easily understand the inconvenience and unreasonableness of such a mode of procedure. He had stated, when he moved for leave to introduce the Bill, that the object he had in view might be obtained by extending the appeal chapters of the Code of Civil Procedure to the Panjáb, but that he could not undertake to advocate such a measure, because it was opposed to the opinions both of the Lieutenant Governor of the Panjáb and the Chief Court. All that he proposed, therefore, was to alter the wording of section 17 of the Panjáb Chief Court Act to the extent only that might be necessary to remedy the anomalous and inconvenient procedure to which it had given rise.

But since he obtained leave to introduce the Bill, the Chief Court had addressed to the Local Government a letter dated the 5th July, suggesting that the sections of Acts No. VIII of 1859 and No. XXIII of 1861 relating to appeals and special appeals, which were excepted from those Acts on their extension to the Panjáb in September 1866, should, by an Act of the legislature, be extended to the province, subject to certain modifications stated in the letter. A copy of the Chief Court's letter was forwarded to the Supreme Government by the Local Government, and the Supreme Government in reply gave its consent to the proposals of the Chief Court. But though the Supreme Government consented, it said that it would have preferred that the appellate system of the Code of Civil Procedure should be introduced into the Panjáb in the form in which it had been introduced into Oudh and the Central Provinces, but if the modifications to which the Code of Civil Procedure had been made subject in Oudh were compared with the provisions of this Bill, it would be seen, he thought, that the Oudh modifications were, practically, not only a much wider departure from the appeal system of the Regulation Provinces, than the provisions of this Bill would be, but that they were more retrograde from that system in a very important respect even than the existing appeal procedure

of the Panjáb. By the particular modification adopted in Oudh, to which he referred, it was provided that any appellate Court might at any time within one year call for the judgment or proceedings of any Court subordinate to it, and revise and alter, or reverse or confirm the same, without any regular appeal or application for review having been preferred. Now it seemed to him that a greater latitude had thus been given to appeal, and a greater element of uncertainty introduced into the proceedings of the Courts, than was occasioned by anything that had been done in the Panjáb. For one whole year, without having received any warning, every decree-holder in Oudh must remain in vague uncertainty as to whether the decree he had obtained was of any value whatever.

The decrees of both subordinate Courts of first instance and subordinate appellate Courts were liable to be set aside by a superior Court without any regular appeal having been preferred, the dissatisfied party not being required to pay anything whatever in the way of stamp-duty.

The greater part of the Bill was taken up with giving effect to the proposals of the Chief Court. These proposals, besides having the effect of getting rid of the anomalous distinction between regular and special appeals, introduced by the Panjáb Chief Court Act, had the further advantage of assimilating to a great extent the appeal procedure for the Panjáb to that which had been prescribed for the other provinces of the empire. The proposals of the Chief Court in fact only modified the appeal system of the Code of Civil Procedure in two respects. One modification was dealt with in the sixth section of the Bill, which provided that "if the lower appellate Court should have reversed or modified the decree of a Court of original jurisdiction upon any other than a preliminary point, a second regular appeal should lie to the Chief Court, or the Court of the Commissioner, as the case might be." He was not quite satisfied himself as to the necessity for the retention of this part of the existing appeal system. It seemed to him that an appellate Court might be quite as liable to err in upholding the decision of a lower Court upon a question of fact, as in setting it aside; indeed that it would hardly set it aside without great deliberation, and without being perfectly satisfied that the decision was erroneous. He trusted, however, that the provision contained in this section would be allowed to stand for the reasons stated by the Court in its letter to the Local Government to which he before adverted, that the Court was averse to introduce the sudden change into the appellate system of the province, which would be the result of the acceptance of the appeal provisions of the Code of Civil Procedure in their entirety.

The only other modification of the appeal system of the Code of Civil Procedure proposed, and which was in accordance with the existing Panjáb system,

was that contained in the eighth section of the Bill, which provided in effect that any appeal might be rejected without summoning the respondent. This was a provision in an opposite direction to the last, and in fact it seemed to him it did more to check the evil of appeals in the Panjáb than anything contained in the Code of Civil Procedure would do. A similar provision was contained in the Code of Criminal Procedure, which allowed an appellate Court to reject an appeal without calling for the proceedings of the lower Court. This provision was a departure from the rules of the Civil Procedure Code, which required that a notice should be served on the respondent in every appeal case, but was justified, he thought, by the different circumstances of the Panjáb as compared with those of the North-Western Provinces and Bengal. It appeared from the general report on the administration of the Panjáb territories for the year 1866-67, which he had there, that the number of civil suits instituted was more than the number of civil suits in 1865 in the Bengal, Oudh and Central Provinces put together, that it was more than twice the number instituted in the North-Western Provinces; in other words, while in the Central Provinces, in 1865, there was one suit instituted to 260 persons, in Bengal one suit to 320 persons, in Oudh one suit to 390 persons, in the North-Western Provinces one suit to 403 persons, in the Panjáb there was one suit to every 90 souls. It appeared also that the average value of each suit in the Panjáb was only rupees 52, whereas in Bengal the average value was rupees 333, and in the North-Western Provinces rupees 373. The excessive litigiousness which characterized the Panjáb, and the very small average value of the suits instituted, were, he thought, reasons sufficient to justify the existing rule which allowed of the rejection of appeals without summoning the respondent, and had been retained in this section. In accordance with this rule, he found that, last year, no less than 919 appeals, or 71 per cent. of the total number disposed of by the Chief Court, were rejected without the respondent being summoned, while more than double that number were rejected by the appellate Courts of the Commissioners and Deputy Commissioners. Now it was not to be supposed that a Court presided over by Judges so learned as those Judges who had been selected to fill the highest judicial office in the province must necessarily be—and one of whom at any rate, Mr. Justice Boulnois, the Barrister Judge, could have had no predilection for the Panjáb system of appeal—would have given such extensive effect to this rule, the application of which was entirely optional, unless they had been satisfied that it was a beneficial rule, and it might easily be understood what a relief this rule must give to some thousands of persons every year, from their not being summoned a second time before the Courts where their cases had already been once decided, in accord-

ance with any mere formal procedure, when their presence was not really required. In order, however, to prevent any difference in civil procedure between the Panjáb and the rest of the empire being perpetuated, if it should not be required by the future circumstances of that province, it had been provided in the second section that the Act should only continue in force for five years. No accurate estimate could probably be formed of the effect which this Bill, if it became law, would have on the number of appeals, nor could he say whether or not his Right Hon'ble friend Mr. Massey would ultimately have to provide for the salaries of any additional Chief Court Judges. By the existing system, an appeal lay to the different appellate Courts in their order of jurisdiction; to the Deputy Commissioner from the Tahsíldár and Assistant Commissioner with ordinary or special powers; to the Commissioner from the Assistant Commissioner with full powers and the Deputy Commissioner, and to the Chief Court from the Commissioner. He had stated, when he moved for leave to introduce the Bill, that, when the order of a Deputy Commissioner had been confirmed in appeal by the Commissioner, as a rule, no further appeal could lie. This statement however was not correct; this was the procedure, but he was not aware at the time he made the statement that this procedure had been altered a short time previously by Act No. VIII of 1859 having been extended, with certain provisoes besides those which excluded the appeal chapters, to the Panjáb, which provisoes allowed an appeal to be preferred to the Chief Court unaccompanied by any such restriction as that which he mentioned. Now, by this Bill, if two Courts concurred, there would be no appeal on the facts to the Chief Court, but on the other hand many appeals that were properly special appeals, and were formerly heard by the Commissioners, would lie direct to the Chief Court. Whether there would be an increase or decrease in the total number of appeals to the Chief Court from this change of procedure there were no means of estimating; the number of appeals to the Commissioners would undoubtedly be reduced, but the appeals they would have to hear would take up more time, because, by the existing system, they might remand any case for second decision, but by this Bill they would be prohibited, in accordance with the provisions of the Code of Civil Procedure, from remanding a case unless it had been disposed of on some preliminary point only.

The third section of the Bill was the only one which Mr. Brandreth had introduced on his own responsibility. It seemed to him that the Chief Court ought to have the same power in regard to removing and trying appeals preferred to subordinate Courts, as Commissioners had by the Panjáb Courts' Act (No. XIX of 1865). That was a power which had not been conferred on the Chief Court

by the Panjáb Chief Court Act. If, however, the Chief Court should be of opinion that they did not require the extension of their jurisdiction provided for in this section, it could be struck out by the Select Committee. With these explanations he asked the Council to allow the Bill to go before a Select Committee, in order that he might be assisted in amending its details, if any amendments were found necessary.

The Motion was put and agreed to.

GENERAL CLAUSES' BILL.

The Right Hon'ble MR. MASSEY moved that the Report of the Select Committee on the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes be taken into consideration. He said the Select Committee had made a few alterations in the Bill, and he also would propose two or three amendments which would have the effect of rendering it more complete. The Committee had introduced, in Section 2, a definition of "Barrister," and had provided that, in the case of any one whose personal law permitted adoption, the word "son" should include an adopted son, and the word "father" an adoptive father. The latter amendment, looking to the fact that the practice of adoption prevailed amongst the great bulk of the population to which the Acts of the Governor General applied, would no doubt be considered desirable. Had such a provision existed when the Legislative Council passed Act No. XIII of 1855—the Indian version of Lord Campbell's well-known Act—there would have been no room for the doubt, which he understood had recently been raised, as to whether a Hindú could recover from a Railway Company damages for a wrongful act or neglect causing the death of his adoptive father. A section had also been taken from Act No. V of 1849, which provided that when any enactment declared that a duty of customs or excise was leviable on any given quantity of goods, a like duty was leviable, according to the same rate, on any greater or less quantity. That amendment was desirable as the Act referred to would be repealed by the Bill to repeal obsolete enactments. A clause had also been introduced to provide that judicial notice should be taken, not only of the Acts of the Governor General in Council, but also of those of the three local legislatures. To that clause he should presently have to propose a slight addition. He would also have to move a formal amendment in section 1 to make the date correspond with the year in which the Act would actually be passed; in the Bill the date stood "1867;" he should move to substitute the year "1868." Clause 17 of section 2 defined the word "obligation." It had

been suggested to him that the definition was rather too narrow, and might have the effect of introducing confusion into Acts where the expression was used. The term "obligation" had two significations; first, the scientific meaning of the jural relation created between parties by the concordance of their will by which that relation was determined, and, secondly, the popular sense of the instrument evidencing the relation. The word was used in the Bill in the latter sense, and though this was its ordinary meaning, there was no doubt that it was not technically accurate. He was therefore inclined to think that that definition ought to be omitted.

The 7th section of the Bill provided that judicial notice should be taken of the Acts and Regulations heretofore made or hereafter to be made by the Governor General of India in Council, the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant Governor of Bengal in Council, whether the same were of a public or private nature. It had been suggested to him by His Honour the Lieutenant Governor of Bengal that this clause omitted to provide for the case of future Legislative Councils, which the Governor General in Council had, under the Indian Councils' Act, power to constitute. To meet that suggestion, MR. MASSEY would propose to insert after the word "Council" in the last line but one of the section, the words "or by the like authority in other parts of British India." These were the only amendments he (MR. MASSEY) had to propose in addition to those recommended by the Select Committee.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

COTTON FRAUDS' BILL.

The Hon'ble MR. SHAW STEWART requested permission to correct an error into which he had inadvertently fallen at the last meeting of the Council. In introducing the Cotton Frauds' Bill, he had stated that the Secretary of State had expressed his approval of the change in the scope and object of the Act proposed by the Bombay Chamber of Commerce. But since the last meeting, MR. SHAW STEWART had, through the courtesy of the Home Secretary, seen the despatch to which he had referred, and perceived that no opinion was expressed as to the desirability of the change proposed. The Secre-

tary of State limited his opinion to an approval of the operations of the officers of the Cotton Frauds' Department, in a direction not contemplated by the Act. He expressed no opinion of the proposed change in the scope of the Act, which MR. SHAW STEWART was led to believe he had done. MR. SHAW STEWART regretted the mistake he had made.

The following Select Committee was named :—

On the Bill to amend the law relating to appeals in the Panjáb and its dependencies—The Hon'ble Sir W. Muir, the Hon'ble Mr. Shaw Stewart, the Hon'ble Prasanna Kumára Thákúr and the Mover.

The Council adjourned till the 10th January 1868.

CALCUTTA,
The 3rd January 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.'
The Hon'ble F. R. Cockerell.

The Hon'ble MR. COCKERELL took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

PEPPER DUTY (COCHIN) BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Cochin), and moved that it be referred to a Select Committee with instructions to report in a week. He said he need not trouble the Council with a repetition of the statement which he had made at the last meeting when moving for leave to introduce the Bill. It was simply a Bill to aid the Native States of Travancore and Cochin in collecting a duty of Customs on pepper exported from their territories, and to prevent the British port of Cochin from being made the means of frustrating the arrangements of those States in the collection of the duty. He apprehended no objection to the principle of the Bill.

The Motion was put and agreed to.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to make better provision for the appointment of Municipal Committees in towns in the North-Western

Provinces and for other purposes, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that this Bill was brought forward at the request of the Lieutenant Governor of the North-Western Provinces. A draft Bill was received from the Government of those Provinces, containing all the matters for which legislation was suggested. These matters had in a few respects been re-arranged in this Bill, and some alterations had been made in the wording of the draft received from the North-Western Provinces; but the draft had not been altered in any material points. He had endeavoured virtually to lay before the Council, in this Bill, all the provisions which the Lieutenant-Governor desired to have enacted. It seemed to him, considering the high quarter from which these provisions had been recommended to their attention, and that he had personally but a very limited acquaintance with the North-Western Provinces, that he ought not, on his own responsibility, to make any alterations in the proposals of the Lieutenant Governor before the Bill was introduced, but rather wait to see whether any amendments would be suggested in Council or by the Select Committee to which he trusted the Bill would be referred.

In the draft received from the North-Western Provinces, the word municipality, meaning any place to which the provisions of the Bill might be extended, was spoken of also as applying either to a town or to a tract of country. He was not quite sure whether the Lieutenant Governor did not intend that he should be empowered to describe circles wherever he pleased, designate them as municipalities, subject them to the provisions of the Bill, and thus raise additional funds over every part of the country, for police, sanitary or other municipal purposes. From other parts of the draft, however, and on the whole, he had concluded that all the Lieutenant Governor wanted was that the Bill should apply only to towns and to such adjacent places as, for the sake of laying down a suitable boundary, it might be advisable to include within the limits of the towns. The Panjáb Act applied only to towns, and MR. BRANDRETH remembered that, when the Panjáb Bill was introduced, His Excellency (the President) stated that he would not approve of it if it were to apply to villages, as he was opposed to any extra cesses being levied on the land. He might mention, however, that both the Bengal Municipal Improvement Act, and also, he believed, the Madras Act, apparently applied to any inhabited tract of country, including villages as well as towns. In the fourth section of the Bill, railway-station, village, building or land were the only places specially mentioned, which might be included for the purposes of the Act within the limits of a town. No special allusion had been made to military cantonments, but if there was any intention, in the North-Western Provinces, of raising funds by

means of an octroi, it was almost indispensable for the proper working of such a tax that all trading interests in the same immediate neighbourhood should be placed on the same footing, and that, wherever there was a cantonment with a large bazár near to a town, the tax should be extended to the cantonment as well as to the town, otherwise the town might be injured by some portion of its trade being diverted to the cantonment; nor, even if no octroi was levied, did there seem any reason why the non-military residents of a cantonment, which was often a place of much trade and with more shops and larger bazárs than any town in the neighbourhood, should be exempt from the same kind of municipal taxation for sanitary and other purposes as other populous places were subjected to. If the Government desired to exempt the military residents of a cantonment and mustered camp-followers from direct municipal taxation, this might perhaps be done, either by specially exempting military residents, on the ground of the contribution which was at present made, he believed, by the Government to the cantonment-funds for roads, police and other purposes, or by the Government itself, instead of making any direct grant, paying the amount of any municipal taxation that might fall under any general rules on military residents or on military buildings. No attempt, however, had as yet been made in the Bill to dispose of any of these matters.

The Bill had been framed in a great measure on the model of Act No. XV of 1867 (the Panjáb Municipal Act.) That Act had been so recently passed by the Council, that he might doubtless consider that such of the provisions of this Bill as were in accordance therewith would not be objected to. He thought therefore that it would be sufficient if, on this occasion, he confined his further remarks on the Bill to the two or three principal points on which it differed from the Panjáb Act. The fifth section provided that all Municipal Committees hitherto appointed under the orders of the Lieutenant Governor, should be deemed Municipal Committees under this Bill, and that Act No. XXVI of 1850 (to enable improvements to be made in towns) should cease to have effect in the towns into which it had been introduced. The Panjáb Bill, when he introduced it, contained a section worded to the same effect, but that section had been altered in Committee. The Committee declared that Municipal Committees appointed under Act No. XXVI of 1850 should not be deemed Committees under the Panjáb Act, unless it was expressly extended to them by the Lieutenant Governor. The cause of the alteration was, he believed, that it was supposed that existing Committees enjoyed rather more independence than they would do under the new Act, and that it was not advisable to interfere with them when they had worked well hitherto; therefore it was determined that none of their existing privileges should be disturbed unless by the express order of the Lieutenant Governor in each case.

By the thirteenth section of the present Bill, a very important power, which was not contemplated in the Panjáb Act, was conferred on Committees, the power of borrowing money for public works on debentures. The power was properly restricted by the previous sanction of the Lieutenant Governor being made requisite for its exercise, but still it was a power that appeared very liable to abuse; there was the difficulty of obtaining good professional advice in regard to all the works that might be recommended by zealous district officers and obsequious Committees. Without such advice, money might be wasted, debts accumulated, and extra taxation rendered necessary, without any benefit whatever in return having been derived by the municipalities. Perhaps it might be advisable to limit the amount of the money to be borrowed to two or three years' expected surplus of the municipal income, after paying for police, sanitary and all other fixed establishments, and to provide for all debts being paid off within given periods.

The only other point he thought he need mention was that the operation of this Bill was not limited to five years, as was the case with the Panjáb Act. The Council seemed to be of opinion, with regard to that Act, that as no restriction was placed either upon the kind or amount of taxation, it was certainly desirable that the question of municipal government should be re-considered after five years' further experience. Probably some suggestions in regard to this Bill, after it had been published, would be received from the North-Western Provinces, and any amendments that were considered necessary could be made by the Select Committee to which he had moved that this Bill be referred.

The Hon'ble MR. SHAW STEWART would not at present attempt to express an opinion whether it was right to extend to the North-Western Provinces a measure which last year was extended as an experiment to the Panjáb. He would only refer to two points, in which this Bill left the model of the Panjáb Act, and which would, he trusted, be carefully weighed by the Select Committee to which the Bill was to be referred. The first of these was in section 5. The Select Committee to which the Panjáb Bill of last year was referred recommended, and the Council adopted their recommendation, that those towns which had already obtained municipal constitutions under the old Municipal Act of 1850 should not, except for special reasons, be affected by the new law. The present Bill proposed to override all such municipalities in the North-Western Provinces, and virtually to repeal Act No. XXVI of 1850. The Hon'ble mover had not shown any reason for this difference between the Panjáb law of last session and this Bill; and he thought it was

a difference of very great importance. When he considered the voluntary nature of the proceeding by which a town accepted municipal self-government, he doubted if they had any right, by an arbitrary law and without in any way consulting the inhabitants, to deprive them of whatever advantages they had obtained for themselves by working under the old law, and impose on them the compulsory arrangements that were now proposed for those towns which had refused to undertake the burden of self-government. He trusted the Select Committee and the Council would give this point their careful consideration.

The other point was that sections 23 and 26 of the Bill would confer on the Municipal Committees appointed under this Bill distinct magisterial powers in certain cases. In the municipal law of 1850, and in all other municipal systems based on it, so far as he was aware, no such provision occurred, and he thought the Select Committee would have to consider whether cause was shown for deviating from the principle that had hitherto guided legislation on this subject.

The Hon'ble SIR H. M. DURAND said :—" I have some remarks to offer upon this Bill, which is one which presents to my mind many very doubtful points.

"The first fact which strikes the attention is the very great and unusual power which the Bill confers on the Committees; I mean the Municipal Committees which the Bill creates. The fact is of the more importance as, from the substitution of the compulsory for the voluntary principle hitherto in force in the North-Western Provinces, the effect of the Bill will be practically to entrust these extraordinary and exceptional powers to the officers charged with the civil administration of the country. From the constitution of the Committees it is clear that, although the official members are not to be more than one-third of the non-official members, yet, that the motive power will rest with the official members, and the non-official members be usually ciphers. The Magistrate of the district and the Commissioner will be every thing; and as, even under the existing or the voluntary system, we know how entirely the working of Committees passes practically into the hands of an active and zealous Magistrate, we may be quite certain that under the compulsory system this will inevitably be still more the case. Under such circumstances I think it incumbent on this Council to weigh carefully the enormous power with which they are investing, nominally, the Municipal Committees, practically, the civil functionaries of the Government.

" I will proceed to note some of the sections which a cursory perusal has led me to mark, and will take them in the order in which they present themselves in the Bill, rather than in that order which their intrinsic import-

ance warrants. Indeed, I must ask the Council to excuse me for the way in which I shall touch on the various subjects, for I have only had the opportunity of giving the Bill a single perusal this morning, and have not had the time to order, as I could have wished with a view of addressing myself to this Council, the various subjects which, if this Bill passes to a Committee, demand most careful consideration. Asking pardon, therefore, for taking up the sections I have marked without reference to their relative importance, I would invite attention to the great powers conferred by the 10th section on the Committee for purposes of taxation, and in the 11th section on the Lieutenant Governor for the collection of such taxes; for their confirmation or their repeal. Then, passing on to sections 20 and 21, I would still further call for serious attention to the unlimited authority conveyed to the Committees by section 20, and the dictatorial powers it is in their discretion to entrust to one of themselves,—always bearing in mind that, by the constitution of the Committees, the motor force and influence is in the hands of the official members, the Commissioner, Magistrate, &c.

"Allied with this subject are the provisions of sections 23 and 24. The Hon'ble Mr. Shaw Stewart has anticipated me in some of the remarks that I should otherwise have offered on these sections, and, as at present advised, I concur generally with the observations which my Hon'ble friend let fall. I shall now content myself with expressing the hope that all these provisions will be carefully scrutinized in Committee.

"Section 27 confers on the Lieutenant Governor authority to suspend or limit all or any of the powers of the Committee, and to cancel any of the proceedings or rules of any Committee. Very ample power, certainly; but neither in this section nor in any other part of this Bill do I find the remotest allusion to the Government of India. The Bill in a word ignores the control of the Governor General in Council altogether. I think this a mistake, for when deputing such extraordinary financial and other powers, I am of opinion that they should not be made legally independent of superior authority.

"In section 29, on the custody and disbursement of municipal funds, the concluding clause appears to me very loosely drawn. Strict responsibility should be laid on some one person for the issue of cheques or orders for payments from the municipal funds, such cheques or orders being countersigned by others of the Commission. In the responsibility for cash payments there should be no shifting, changeable responsibility. However, this is a point of detail that can be dealt with in Committee.

"So likewise the maximum laid down for the strength of the municipal police. This maximum of one man to thirty houses may be based on statistical grounds of some kind or other, but it is far from clear upon what grounds, if any, such a provision enters into the body of this Bill, and it will need examination.

"According to the provisions of this Bill, the power of borrowing on debentures is entrusted to the Committees, under the control of the Lieutenant Governor, to whom an annual balance-sheet is to be submitted. For the information of the public, these annual statements ought to be published, so that the precise condition of the separate municipal funds, and their obligations, may be easily ascertainable, so that the public, whenever invited to take up municipal debentures, may have the means of knowing precisely what they are about.

"But besides this, which is due to the public, the Local Government should be bound annually to furnish the Government of India with an abstract of the balance-sheets of the various municipalities under its administration. This is the more essential as there is no sort of remedy provided in the Act against defaulting municipalities. Now, considering the zeal with which Commissioners and district officers naturally enough desire to see the improvement of their charges, it is hardly to be expected that, unless very carefully watched and controlled, there will not arise instances in which the Municipal Committees will outrun the constable, and the municipal funds prove unequal to meet the liabilities they have incurred. Under such a contingency, bearing in mind the constitution of the Committees, and that the civil functionaries of Government will be the real workers of the system, it is indubitable that debenture-holders would hold the Government responsible.

"Over and above this consideration, however, wherever an Act of this kind is in operation, it is I think of extreme importance that the Financial Minister of the Government of India, who has to adjust the fair incidence of general or imperial taxation, should have at command the means of judging of the actual pressure of municipal taxation under various Local Governments. He should not be compelled to waste time in asking for reports on such a vital question, waiting for months or years before he got them. I doubt whether at present even a vague approximation is at his command; yet in order to satisfy himself of the soundness of his own financial measures with regard to the equitable distribution of the burthen of imperial taxation in the least objectionable and least afflictive form, he ought to be able accurately to estimate the degree of pressure already laid on the people by local and municipal taxation.

"I could add to these remarks, but I have said enough to show that, if this Bill pass into Committee, its provisions must be carefully reviewed and rigidly scrutinized.

"I should have dwelt on the inexpediency of the Bill covering, as it does, the levy of municipal taxes from those in the military service of the State. This is a point on which I entertain a strong opinion, and consider that the action of the Bill should have been carefully restricted. But as I hope that His Excellency the Commander-in-Chief may touch on this omission in the Bill, I shall abstain from entering at any length on the question."

His Excellency the Commander-in-Chief was afraid he must swell the number of those who viewed the Bill with much disfavour. He had no doubt that the Government of the North-Western Provinces had given great consideration to the Bill, but they must recollect that that Government was much interested in prosecuting the objects of the Bill, and that, although they asked the Council to give them great and despotic powers of taxation, the Council were really furnished with no reason beyond bare assertion why such taxation was necessary. Mr. Brandreth had told the Council that he was but little acquainted with the North-Western Provinces, and that he had merely accepted what was put before him. But when the Council was asked to confer powers on the Local Government which would enable it to impose taxation in a very arbitrary and searching manner on all classes of the community, he did think that that Council, and the Government in its executive capacity, were bound to call for full information before they gave such powers to the Local Government without any expression of opinion on the part of the people. The Council were absolutely without that information. If he turned to the Statement of Objects and Reasons, His Excellency found that they were told that the existing Municipal Act had by experience been found in the North-Western Provinces to be deficient in several points. Now what a very mild expression that was! Surely the Council ought to have had such a statement of facts as to enable them to judge precisely as to what portion of the existing Act was defective, and how the Local Government had been inconvenienced thereby. If they proceeded to consider the principle of the Bill, it would be found that they were asked to make an alteration of an alarming character; they were asked to entirely change the principle on which municipal taxation had hitherto been imposed on the thirty millions of people in the North-Western Provinces. Hitherto such taxation had rested on what may be called the popular principle; it could not be imposed without the inhabitants of certain towns first making a request that the

operation of the Act should be extended to them. But now, on the contrary, in any town, it was to be the mere fiat of the Lieutenant Governor which would be sufficient to impose such taxation, whether it asked for the establishment of the municipal forms or not. If they were told that they had the Panjáb Act as a precedent, he would remind the Council that they were induced to pass that Act solely on the condition that it was to be viewed as an experiment. HIS EXCELLENCY himself considered the conditions of that Act to be of a most dangerous character. Still that Act was put before them as an experimental measure; it was only to last five years, so that Government might take the opportunity of judging of its operation, and that at its expiration they might revert to the voluntary principle, or they might be induced from a sufficient induction of facts to hold that there was no danger in extending the scope of the Act. Viewing it as an experimental measure, surely the Government of the North-Western Provinces might have waited till the five years had elapsed before asking the Council to pass another measure of the same kind, but which, according to the North-Western Bill, was to be perpetual. HIS EXCELLENCY submitted that, the time for such legislation had not yet arrived. Whether the principle of the Panjáb Municipal Act were right or wrong, he thought that the Council were bound by the conditions on which they passed that Act to await the issue of their experiment for four years more, at least, before they put in force similar provisions in other provinces.

The details of the Bill having been considered by his Hon'ble and gallant friend Sir Henry Durand, he would not say much about them; but there were certain points regarding them which he would like to re-state, and if guilty of repetition, he (SIR WILLIAM MANSFIELD) would ask the Council to bear with him, because he considered that no Bill had recently been submitted to the Council which had so important a bearing on the peace and contentment of the people. If he looked to the provisions of Part II, he found that an absolute power of taxation was proposed to be vested in the Lieutenant Governor. It was true there was a sort of fiction of a municipal constitution: they were told that there was to be a Committee. Yet what was it? It was the Lieutenant Governor signifying his wish through the channel of the Municipal Committee. His powers under the Bill were great, not merely as regarded the defining of the limits of towns and villages that were to constitute a municipality, but even with regard to the mode of assessment; not merely as to what was to be the tax on the people; what was to be taxed; who were to be taxed, but even as to the constitution of the Committee, which was to be so framed that the views of the Lieutenant Governor should alone be listened to. They all knew that corporations were difficult things to deal with. It had been gravely said by Sir Edward

Coke that a corporation could not be excommunicated because it had no soul: it was stated with some coarseness by an eminent Chancellor, at the close of the last century, that a corporation could not be trusted because it had neither a body to be kicked nor a soul to be damned. And if the Council looked to the constitution of a Committee as sketched in the Bill, they would find that it had neither soul nor body: its actions were confined to the execution of the wishes of the Lieutenant Governor; it was merely the echo of his whisper. His Excellency did not think it was possible to conceive any thing more dangerous, and he completely concurred with Sir Henry Durand that it was impossible to fence it with too much care, or to view it with too much distrust; there was not a loop-hole left through which might leak the expression of popular opinion; there was not a corner or cranny in which the people taxed could find space to protest against the mode of taxation adopted, or guard themselves in any way from the despotic powers of the Lieutenant Governor and those who represented him in the local administration. His Excellency had for so many years been connected with the Government in this country, and knew so well the difficulties with which Local Governments had to contend, that he was most unwilling unnecessarily to cramp their powers: he knew how they were pressed on all sides by the demands of the Supreme Government, and by the natural desire for improvement by which Local Governments were so honourably actuated. But there were other things still more important; that those who were taxed should have some voice in the apportionment of the proceeds of taxation, and some means of expressing their dissatisfaction if taxes were imposed in an improper manner. He found in this Bill no safeguards, no power of that sort secured to the tax-payer in even the faintest degree. On the contrary, he found that the Lieutenant Governor was to be represented by four official members, the Magistrate of the district, the Civil Surgeon, Executive Engineer, and the Tahsíldár of the head-quarters Tahsíl. Every other member of the Committee was to be either a nominee of the Lieutenant Governor, or he was to be appointed by election in such manner as the Lieutenant Governor might direct: it was not even provided how that election was to be carried on. Further, the Commissioner of the Division was to be entitled to attend all meetings of the Committee, to have free access to all records and accounts, books and other documents, and to make such suggestions for the consideration of the Committee as he might deem fit, and the Committee must furnish him with any information he might call for. It was well known that the Commissioner of the Division represented in a still more positive manner the Lieutenant Governor himself. Whatever, therefore, might be the opinions of the Commissioner, whatever might be the results of the orders given by him, whether for the spread of material

improvement and the establishment of more police, or the finding of ways and means for such operations, such opinions and results were nothing more or less than the echo of the wish of the Lieutenant Governor, expressed through the Commissioner. Lieutenant Governors and Commissioners and Magistrates in this country were generally animated by the most ardent zeal, but it did sometimes happen that that zeal outran discretion. When there was a total irresponsibility, His Excellency thought they had reason to put some check on the actions of the local officers. They were able to quote various instances in which the application of large local funds in certain places had been made with a view to ornament and beautify localities; sometimes much more to the convenience of European ladies and gentlemen, than of the people who paid the taxes. They had beautiful parks in one place and magnificent gardens in another, all made out of the local funds. The Bill provided no safeguard against the application of the municipal funds to such agreeable but comparatively useless projects. In the course of his duties, it was His Excellency's lot to travel over the Provinces under the several Governments and administrations, and he was constantly thrown into communication with men of all classes who talked freely with him, and if there was one point more than another in which jealousy was manifested, it was in the mode of disbursing local funds. Very recently, His Excellency was stopping for a day in a town of some ten thousand inhabitants, in which there was a beautiful new market-place, a handsome dispensary, a new square, a cross erected at the meeting of certain roads. It was in fact a perfect model of a place. But how was all that done? From local funds. His Excellency could not help seeing that local funds might be made to do in a year or two what might be more safely spread over a much longer time. Among the other buildings at the town in question, His Excellency saw the office of the octroi. Here was a rural town in which there were no manufactures, and there was the octroi office, at which the producers, the farmers of the country, paid an octroi for the introduction of their grain into the markets of this town. His Excellency had also heard there that the industry of cotton-pressing was stifled, or about to be stifled, because of an octroi put on cotton at Hattras, in the North-West Provinces. This had been told him in conversation. His Excellency was not sure of the precise facts in this matter, but gave it as an instance of the abuses likely to be practised by Municipal Committees. The Council knew something of them and the manner of their work. They could understand that district officers did not look much beyond the confines of their own districts, and the Native gentlemen who sat with them in Committee did not see beyond the walls of their own town: they had consequently no objection to get the funds required for municipal purposes from the people living outside, in short to shift the

burthen of local or municipal taxation from themselves on others. His Excellency was now able to assert, with something like authority, that that abuse had been pursued so as to become almost a system in various parts of India. In Oudh, he was able to say, the abuse of the octroi had so attracted the notice of Mr. Strachey that he was bent on applying a remedy. In other parts of the country the octroi had really come to be a transit-duty in effect, although called an octroi. In another presidency, His Excellency had himself seen such a tendency, and he believed that the octroi had in itself a self-acting movement to such abuse, and it was almost impossible for any Government, local or imperial, to stop that tendency or put a stop to it in any manner whatever, if pressure were being constantly put on the local Committees to raise funds.

With respect to what fell from Mr. Shaw Stewart regarding debentures, His Excellency thought that they should take great care that that new power, which had not been given in any manner by previous legislation and was not to be found in the Panjáb Act, was not abused. But there was one important question regarding it which was briefly alluded to by Sir Henry Durand, namely, who was to be responsible in the case of a defaulting municipality? Seeing what the constitution of the Municipal Committees was to be, and that debentures were to be issued with the sanction of the Local Government, which, it might be assumed, would have given the first hint that debentures were wanted, it appeared to His Excellency that it would be impossible for the Supreme Government to escape the responsibility on account of those debentures. But there was another objection in connection with that matter. The Government of India did not allow any minor Government to contract loans on its own account, lest perhaps it should involve the credit of the Government of India itself. If therefore it became necessary to borrow money on account of any Local Government for any purpose, such for instance as an irrigation scheme, the Local Government would come up and state its wants to the Government of India, and the money would then be borrowed by the Government of India. The Bill proposed to grant a power to the Municipal Committees—that was, to the Lieutenant Governor speaking through the Municipal Committees—which had always, as a matter of financial principle, been denied to the Local Governments, even to those who were assisted by a Council, as in Bombay and Madras. Viewing the great tendency to waste wherever large funds were at the disposal of irresponsible bodies, His Excellency must say that he thought the only amendment possible with regard to the proposal to give Municipal Committees the power of borrowing money by debentures, was to strike out the sections altogether. He did not

think it was possible to frame any safeguard sufficient to protect the credit of the State, when they entrusted such a power to a municipality, who would not only have had the formal sanction of the Local Government, but who would have been prompted by the Lieutenant Governor himself, because, in considering this matter, His Excellency must say that it was the Lieutenant Governor, and not the screen of a Municipal Committee, that they must look at: they must take the fact of the real governing power, and must throw away the Committee. That view of the subject might not at the first glance be so apparent to the public and to those who were to manage the Committees, but they must deal with it in that light as a simple matter of fact.

With respect to the point stated by Mr. Brandreth, and on which he had been appealed to by Sir Henry Durand, in regard to cantonments, His Excellency would observe that, under the orders of the Governor General, a circular had lately been directed to the several Local Governments as to whether municipal taxation was applicable to cantonments, and if so, in what form such taxation should be imposed. His Excellency had the greatest objection to it himself in any form, as he did not think, considering the manner in which military cantonments were organized, that it was either equitable or politic to extend municipal taxation to them. He said 'equitable,' because municipal arrangements were for the benefit of citizens. It had always been held that cantonments were Government establishments for the residence of military men who were there according to military orders in the discharge of their duty, the expenses of roads and so forth falling on the State. Now, although Bills might be passed, such as the Panjáb experimental Act, which gave the power of taxing people without their being consulted, His Excellency did not think it would be possible to introduce such a practice if they had a British constituency to deal with. If therefore they extended such provisions to cantonments, in which resided British officers and other members of English society, His Excellency was convinced that they must frame their Municipal Bills on a totally different principle. There was no Englishman, he imagined, who would be content to live under a system which ignored the right of taxpayers to have a voice in the raising and application of the municipal taxes—a system deprecated in the report of the Commissioners who reported before municipal reform took place in 1835, and who said that reform was then required in England because of the close character of the municipal corporations of that day, when those who paid the taxes were unable to know how the proceeds of those taxes were disbursed. Another point in connection with military officers should be considered. His Excellency thought it extremely dangerous that military men, living in a state of discipline, should be mixed up with measures

of taxation which would give them a right to discuss the measures of the Government which they were bound to serve; yet, if you subjected them to that taxation, they would require to be represented, and not only that, but they would insist on discussing all questions connected with municipal operations. He thought that would be dangerous in a political point of view, and very wrong in a military point of view. That matter was, however, under investigation, and he would only ask Mr. Brandreth, who was in charge of the Bill, to leave out the question of cantonments, and let it be treated in the manner which had already been decided by His Excellency the Governor General.

It was not for His Excellency to urge that the Bill should not go to a Select Committee; but he would express a fervent hope that, when in Committee, the interests of taxpayers, and the important principle that they should be consulted, would not be forgotten, and that the Committee would bear in mind the principles which had carried so much weight with them in India till now, and were never forgotten by our countrymen at home.

The Hon'ble Sir W. Muir wished to say a few words in favour of the Bill, which he trusted would be allowed to go into Committee. He had read this Bill for the first time that morning, and therefore was not prepared to go thoroughly into the subject. In the course of the debate, questions of the highest importance had been raised, affecting the first principles of local administration; but he did not think that anything had been advanced to prevent the Bill being entertained favourably by the Council, though some of its provisions might be susceptible of improvement. His Hon'ble and gallant friend, the Commander-in-Chief, had remarked that a sufficient case had not been made out to prove the necessity for the introduction of this measure, and had urged that it should be postponed until the corresponding enactment had had full trial in the Panjáb, that was for four years. But he (Sir W. Muir) could not see the necessity for any such postponement. The measure had been approved as an experimental one for the Panjáb, and he did not see why the North-Western Provinces should not be admitted to share in the same advantages from the measure, even as an experimental one, as the Panjáb. The Act had now been in force in that Government for a year, and he had heard no complaints of its having worked badly in any respect: it might be presumed that the Government of the North-Western Provinces had ascertained that the Act had so far succeeded and answered expectations before they recommended its extension. At any rate, the North-Western Provinces were entitled to claim that they should have the benefit of the same measure, even if the Council should see fit to pass the enactment as an experimental one for a term of years.

Although the reasons which induced the Government of the North-Western Provinces to propose this measure might perhaps have been stated more in detail, yet he did not agree with His Excellency the Commander-in-Chief that no sufficient grounds had been submitted. In the Statement of Objects and Reasons it was shown that, whereas the present municipal law required an application from the people themselves, in order to bring it into play, those really concerned were indifferent in the matter. Unless, therefore, the Government acted *proprio motu*, there would be no early prospect of anything being done towards municipal improvement. The Government were responsible for the sanitary condition of towns, and there were also other objects of deep interest to the people which it devolved on the Government to carry out—education for instance; and yet it would not be possible for the Government to introduce these important reforms and improvements without a machinery such as this Bill contemplated for raising and administering the necessary funds.

He would also urge that the Bill was in conformity with those principles which were now advocated of local taxation. It was now admitted that certain branches of the local administrations should be met by the raising of local funds by means of license-taxes, &c. But unless the Council sanctioned some such measure as this, giving the power of initiating local taxation to the people under the guidance of the Government, it would be impossible to carry the proposed principles into effect.

It had been stated that the existing municipal taxation under Act No. XXVI of 1850 was a voluntary measure, since the people must themselves apply for its introduction, and that, therefore, taxation under it was not subject to the same objection as under this Bill, which provided for the compulsory application of the measure. It had also been said that, notwithstanding the provisions for the Committee themselves proposing the taxes to which they should be subjected, it was notorious that whatever was done would be at the prompting of the official members, and would, in fact, be the action of the Government. But he (SIR W. MUIR) might apply the same reasoning to the present system. It might be said with equal truth that the chief people of a town were induced by official influence or pressure to apply for the introduction of Act No. XXVI of 1850, and when it had once been applied, they could not rid themselves from its obligation, and from the taxation which, equally with this Bill, it involved. In this view it must be looked upon, equally with this, as a measure virtually of Government taxation.

Valuable suggestions had been offered in the course of the debate, and he (SIR W. MUIR) was disposed to think the Bill might be improved in Committee by

the adoption of some of them. Some checks might be introduced to secure that the modes of taxation should be really in conformity with the desires of the people. The system might possibly be more popularized. For example, in section 6 it was proposed that the non-official members might be selected either by the direct nomination of the Lieutenant Governor, or by election. Whether some plan might not be secured for having a portion of the Committee invariably nominated by popular election, he was not prepared, without further consideration, to say; but such a modification would to a great extent obviate the objection that had been raised. If the Bill went, as he trusted it would, into Committee, this point could be farther considered there.

Then, it had been objected by His Excellency the Commander-in-Chief that the powers assigned to the Lieutenant Governor were too absolute and despotic. But really, unless some considerable authority was vested in the Government, there would be a danger of taxation taking wrong courses. At present the Native communities themselves were indifferent and also uninformed on the subject of taxation, and it seemed absolutely necessary, in order to ensure just and politic taxation, that a complete authority should be reserved in the hands of the Government.

In the remarks which had fallen from his Hon'ble and gallant friend Sir Henry Durand, as to the advisability of accounts being rendered to the Supreme Government, in reference to loans taken up under the 13th section, he (SIR W. MUIR) fully concurred. Indeed, it would probably be expedient that the sanction of the Government of India should first be obtained for such loans. Some responsibility—at least an ultimate and eventual responsibility—would be regarded as attaching to the Government, and it was only right, therefore, that it should have the means of checking the account.

In respect to what had been urged against section 5, that Committees already formed under Act No. XXVI of 1850 should not be brought under the proposed Act, he (SIR W. MUIR) was disposed to think there would be a decided advantage in bringing them under the same law, and so having a uniform system for all Municipal Committees; and he could not see that there would be any injustice in so treating them.

There were other matters in the Bill which might be animadverted on, but they were more or less matters of detail, and there would be full opportunity for considering them if the Bill was allowed to go into Committee.

The Right Hon'ble MR. MASSEY said that, like Sir Henry Durand and Sir William Muir, he had not had time to examine very carefully the provisions of

the Bill, but he was satisfied that it should not be summarily rejected. The objects which the Bill had in view should, he thought, be encouraged. Those objects were stated in the preamble to be police, conservancy, local improvements and education. If those objects were to be promoted, they must be provided for from local resources, and those resources could only be developed by the action of the Local Government. His Excellency the Commander-in-Chief had objected to the Bill as constituting a Committee which, in fact, would be ruled by the Lieutenant Governor. MR. MASSEY agreed with His Excellency on that point. Looking at the mode in which the Committee would be appointed, so far as it professed to assume the status of an independent body, it was, he must say, a phantom and a fiction. The Bill substantially conferred power on the Lieutenant Governor to tax the people of the Province for the purposes named in the Bill. MR. MASSEY would be very glad, if possible, so to constitute the Committee as to provide for that infusion of the independent element which had been adverted to by Sir William Muir; but MR. MASSEY was not satisfied that the independent action of the Committee would not be weakened by an attempt which would probably be futile. There was no possibility at present of constituting, in this country, any body containing a representative element. Every Member of the Council itself at which they were sitting, and which had power to tax the whole people of India, was nominated by the head of the Government, without reference to the wishes of the people or any mode of election. He must say, therefore, that he was not satisfied that the powers proposed to be conferred on the Lieutenant Governor of the North-Western Provinces could be exercised by any more responsible or better authority. But when he came to consider the powers proposed to be conferred on the Lieutenant Governor by the Bill, he was disposed to be more critical. His Excellency the Commander-in-Chief had adverted to the fact that there was no provision in the Bill for the examination and independent audit of accounts. The Committee was required merely to make returns of their expenditure annually, or at any more frequent intervals that the Lieutenant Governor might appoint; but it appeared to him (MR. MASSEY) that the provision contained in section 34 as to the submission of statements of receipts and disbursement of the funds raised under the Bill was very insufficient, and that it would be expedient that those disbursements should be examined by an independent authority, and that statements of receipts and expenditure should be submitted, either annually or half-yearly, to the Government of India. He also agreed with His Excellency the Commander-in-Chief that the Government of India might be involved in a contingent responsibility in the event of the municipal funds being misused. It therefore behoved the Government to take measures for the prevention of such a contingency, and to arm itself with power to en-

force such regulations in that respect as it might think proper. His Excellency suggested that the Bill itself might be deferred until the Council should ascertain the result of the incomplete experiment which had been tried last year in the Panjáb. MR. MASSEY, however, was extremely unwilling that urgent requirements of the kind contemplated by the Bill should be postponed, and he was anxious that this Bill or some such measure should be tried in the North-Western Provinces.

There was one provision in the Bill which he looked on with great hesitation and disfavour. By the tenth section, power was given to the Municipal Committee, with the sanction of the Lieutenant Governor, to impose taxation; and thus, through the instrumentality of this power, the Local Government could cover the Province with a network of taxation, in contravention or evasion of the Indian Councils' Act, which rendered it necessary that all taxation, whether imperial or local, should receive the sanction of the Governor General in Council.

The Bill also proposed to confer on municipalities the important power of raising money by debentures. Reading that provision by the light of English experience, he should regard it as one, not only unobjectionable, but absolutely necessary to carry out the purposes of the proposed Act. There was not a municipal body in England which had the power of local taxation, which had not also the power of raising money by debenture. It was impossible to carry out improvements without large funds, which could not be provided for out of the proceeds of annual local taxation. In England no difficulty was felt in obtaining advances on local credit, but that was because the local resources were of an ample and substantial character. The security which could be offered was sufficient to tempt capitalists, and there was seldom any difficulty in raising money on good security. Even if such difficulties existed, there was an Act of Parliament which authorized the Treasury to advance money on such security, and large sums were lent by the Government for local improvements. In India, however, the case was different. He greatly doubted whether, in the first place, the Local Government could offer any security which would induce Indian capitalists to come forward to lend their money. If funds could possibly be raised, it would no doubt be at a high rate of interest; and even if the Municipal Committees could get money at a moderate rate, his experience of Indian institutions was such as to suggest a vivid suspicion that the Government of India would be ultimately responsible to the persons who advanced the money. He would therefore much prefer to see the omission of the section, and to reserve the power of raising money for the consideration of the Government of India whenever the necessity arose. If the object for which the money was

required was desirable, and the local resources were adequate, the best way would be for the Government of India to advance the requisite sums from imperial resources, and thus at once accept the responsibility which would practically devolve upon them.

Those were the only observations which he thought it necessary to make at the present stage of the Bill. He admitted that there were materials in the Bill for a very valuable law, and he did hope that, if it were carefully considered with the amendments which had been suggested in the course of the debate, and if such of those amendments as were found valuable were introduced into the Bill, a commencement would be made of a system of local taxation for local purposes which would ultimately conduce to the benefit of the country, and enable the Government to carry into effect such improvements as it behoved every civilized community to effect with as much speed as was consistent with a wise economy.

The Hon'ble MR. COCKERELL said that the main provisions of this Bill, as they might be termed—he referred to those contained in the 10th section—appeared to involve a wrong principle, *i. e.*, the vesting in the Local Government a practically unlimited power of taxing the population and owners of property in the towns to which the Bill, if passed into law, might be applied, without their sanction. These provisions, he was aware, had been under discussion in this Council and eventually passed, in the same form as they stood in this Bill, in the Panjáb Municipal Act of last year; but grave doubts were then expressed as to the policy of conferring such extensive powers on the Local Governments, and the disinclination of certain Hon'ble Members to give their accord to such a measure was apparently overcome solely on the understanding that the proposed Act was purely tentative and temporary, and on the assurance of the Hon'ble promoter of the Act, and of those whose experience of the country in which the Act was to come into force entitled their opinion to the greatest weight, that the state of things which it would introduce, and the manner in which it was likely to be carried out, would not be materially different from that which was already in existence, and that the practical effect of the Act would be, rather to give a legal status to existing municipal institutions and their proceedings, than to impose any new burdens or restrictions on the people.

But when it was proposed to extend this experimental legislation to a much wider sphere; to provide for its operation in some of the largest and most densely populated cities and towns of the empire, he ventured to think that it was incumbent on this Council to examine more closely the principle by which the proposed power to impose local taxation for municipal purposes was regulated.

The section to which he referred, as also the corresponding section in the Panjáb Act, was apparently taken from the 7th section of Act No. XXVI of 1850. But there was this important distinction in the circumstances of these different enactments that, whereas the section in the Act of 1850 which provided for this unlimited discretionary taxation was preceded by important preliminary conditions, which precluded the introduction of the Act into any town without the consent of the majority of the people who would have to bear the burdens which it would impose, in the case of the present Bill and the corresponding enactment of last year, the people upon whom the taxation was to fall had no voice in the matter. For although the Bill attempted, by its provisions in regard to the constitution of Committees, to give a representative character to the agency by which the local taxation was to be defined and regulated, that agency would nevertheless be virtually selected by the Local Government; its constitution and acts would be so directed and controlled by the same authorities as to give it practically no representative form whatever in the ordinary sense of the term.

Such being the case, he ventured to maintain that it was the duty of the legislature to affix some reasonable limits to the power of the Local Government in enforcing a system of taxation upon the population of any town with or without their consent.

That principle had been fully recognized in framing the municipal enactments which were in force in the Lower Provinces, and although he did not advocate the restrictions which they contained as to the form which local taxation for municipal purposes should take—for he could readily conceive that the form of direct taxation which obtained exclusively here might be unsuited to application as the sole source of income in the towns of the Western Provinces—he submitted that, where the taxation imposed took the direct form of a rate upon real property, or an assessment on the circumstances of the person assessed, some reasonable limit should be fixed by law as a safeguard against the imposition of undue burdens upon the people.

Where taxation was imposed in the indirect form of duties upon produce and other articles of export or import, a limit was impracticable, and was so, he thought, from the very circumstances of the case—for in such instance there were certain natural restrictive influences, if he might so term them, which tended to operate as a guarantee against undue burdens—for if the trade of any town in any particular branch were to decline through its subjection to an excessive duty, in proportion to such decline would the revenue derived from its taxation be diminished, and the municipal administration would have a

direct self-interest in preventing such results; but when the taxation of real property, or direct assessment of the inhabitants of any town, was resorted to, the case was different; neither property nor persons could escape the impost, and the guarantee against its excessive and oppressive incidence was wanting.

As the Bill, amongst other provisions, contemplated the borrowing money on the issue of debentures by the Municipal Committees, it was not improbable that recourse to direct taxation would be found necessary to provide a sufficient security for loans; the sources of indirect taxation were fluctuating and uncertain. Even in Calcutta, municipal credit had not attained that position which would enable it to act freely in the matter of raising loans without the support of a Government guarantee, and yet here the public creditor had some fixed data by which he could estimate the value of his security; local revenue, based on indirect taxation only, had no such data, and he apprehended that, although there might be a general preference for indirect taxation, the direct form of a rate on real property must be resorted to.

For these reasons he hoped that the present provisions of the Bill relative to the imposition of taxes would undergo such alteration in Committee as would supply a safeguard against the possibility of the imposition of excessive burdens on real property or persons for the purposes of the Act.

The provisions of section 27, which empowered the Lieutenant Governor to suspend or limit the powers and cancel the proceedings and rules of the Committees, seemed to be open to grave objection.

Neither the necessity for, nor the sound policy of, such provision was apparent. It was unnecessary, because almost all the rules and proceedings, with the exception of those referred to in section 20 of the Bill, must be primarily approved and sanctioned by the Lieutenant Governor before they could have effect, and there could be no reasonable grounds for the exercise by the Local Government of the power of revoking measures initiated with its assent, and indeed under its direct authority. It was impolitic, because one of the main objects of the introduction of municipal administration was to stimulate the interest of the more intelligent portion of the community of the towns, &c., to which it was applied, in measures which had for their object the amelioration of the condition of the people, by inviting them to take a share in the local administration which devised those measures and carried them into operation; and if their free action was to be restricted by such an excessive degree of interference by the Government as this provision of the Bill contemplated, he apprehended that there would be a difficulty in inducing men of the greatest intelligence and

independence of character, in short, the very men that were most needed, to serve on these proposed Municipal Committees, or at least to take an active interest in their affairs. Any provision that would be likely to result in discouraging the taking an active share and interest in the direction of municipal affairs by this class of persons was much to be deprecated. For these reasons he hoped to see this section struck out in Committee.

There were other points of detail which seemed to call for careful attention when the Bill went into Committee. Some sections, such as the 32nd, 33rd and 36th, seemed to be wholly unnecessary, as providing for matters already within the provisions of the existing law, or as treating of subjects for which no legislative sanction was required.

Objection had been taken by one Hon'ble Member (Mr. Shaw Stewart) to the proposed assignment of certain magisterial authority to Municipal Committees, for dealing with nuisances, on the ground (as he understood him) of the supposed innovation which the measure involved. The proposed assignment of such jurisdiction was not without precedent; more extensive magisterial powers were conferred on Municipal Committees by the District Municipal Improvement Act of the Bengal Council, which had been in operation in most of the chief towns of the Lower Provinces for the last three years, and he was able to state, so far his experience of the results of their exercise of those powers enabled him to form an opinion on the subject, that the experiment of investing them with magisterial authority had been entirely satisfactory.

His Excellency the Commander-in-Chief objected to conferring upon Local Governments the power of pledging their credit by the issue of debentures, as was provided for by the 13th and following sections of this Bill. His Excellency would seem to be unaware that precisely similar provisions existed in the Act of the Bengal Council to which he had above referred, and which had been in operation for some time past. He was not prepared to say what had been the results of those provisions, or whether the power created by them had ever been exercised by the Municipal Committees; but he thought it likely that recourse might have been had to them both in Howrah and the suburbs of Calcutta.

The Hon'ble MR. BRANDRETH said that, as he had taken charge of this Bill, it would be incumbent on him to say a few words with reference to the observations that had been made by several Hon'ble Members upon the Bill. He was very glad to hear that, with the exception of His Excellency the Commander-in-Chief, all the other members of the Council who had spoken, though

they objected to some of the provisions of the Bill, and were generally of opinion that it required a good deal of further consideration, were still in favour of his motion that it should be referred to a Select Committee. Some very important observations had been made in the course of the debate which had just taken place, which would, he had no doubt, be carefully considered by the Select Committee to which he trusted the Bill would be referred. The first speaker, his Hon'ble friend Mr. Shaw Stewart, in expressing his disapproval of the fifth section of the Bill, which provided that existing Committees were to be deemed Committees under the proposed Act, said that he (MR. BRANDRETH) had not indicated what course he intended taking with reference to this section; but MR. BRANDRETH had stated the points on which this section differed from the corresponding provision in the Panjáb Act, in order to shew that it was a matter which required the consideration of the Select Committee. Though he took charge of the Bill and introduced it because he approved of most of its provisions, yet the Bill itself was by no means drawn up exclusively in accordance with his views, but in order to represent the proposals of the Lieutenant Governor of the North-Western Provinces in regard to the legislation which he thought necessary. His Hon'ble friend Mr. Shaw Stewart, as well as Sir H. Durand, adverted to sections 23 and 24 of the Bill, which gave Committees the powers of Magistrates in regard to certain matters, as conferring new and objectionable powers which Committees had not hitherto exercised. His Hon'ble friend Mr. Cockerell, however, had told them that, in Bengal, Municipal Commissioners were invested with the powers of Magistrates, and were considered to exercise them in a satisfactory manner. He would observe also that it was a very restricted power which was conferred on Committees by the sections animadverted on. If he remembered right, under sections 62 and 63 of the Code of Criminal Procedure, Magistrates had the powers described with which Committees were invested by this Bill; all that the Committees would be empowered to do was to enjoin persons not to continue nuisances, and to prohibit certain obstructions and injuries being committed. If any person disobeyed the orders of a Committee in such matters, he could not, he believed, be punished by the Committee in the exercise of any powers conferred by this Bill, but would have to be prosecuted before a regular Magistrate fully empowered to punish such disobedience. Again, the powers that might be exercised under chapter XX of the Code of Criminal Procedure in regard to local nuisances, were guarded against any liability to abuse by many important restrictions presented in that chapter; but if it should appear that, in places where Municipal Committees were likely to be appointed, there were at present resident Magistrates, he was by no means bent on retaining these sections. The investing of the Municipal Committees with these restricted magisterial powers would, however, add

some extra dignity and importance to the office, which might not be without advantage. Sir H. Durand adverted to section 21 of the Bill, as conferring a dangerous and excessive power on individuals; but all, he imagined, that was intended by that section was to allow Committees to delegate to individuals, in certain respects, such of their powers as they could not conveniently exercise in their collective capacity. Sir H. Durand considered that provision ought to be made for the accounts of the Committees being published. Section 7 of the Bill however directed that the proceedings of Committees should be published in some local English or vernacular newspaper, or in such other manner as the Lieutenant Governor might direct. The Hon'ble and gallant member also considered that provision ought to be made for regular statements of accounts being submitted by the Local Government to the Government of India, with a view to some check on municipal expenditure being exercised by the Government of India. This Bill however only professed to deal with the relations of the Municipal Committees towards the Local Government, to which estimates and accounts were to be submitted. If the Government of India really wished to examine and check these accounts, he imagined it had only got to call upon the Local Government to furnish it with any statements on the subject it might require; or if the Government of India desired that provision to this effect should be made in the Bill, it could easily be done; it was not likely that any objection would be raised. As a minor point, Sir H. Durand raised some objection to the maximum proportion of one policeman to thirty houses being fixed. It would perhaps be better not to attempt to fix any proportion; for whatever maximum was fixed would probably be excessive if applied to most towns, and would consequently be no real safeguard against their being overrun with constables, and the mere suggestion of a proportion might put it into the heads of Police Superintendents to ask for more policemen than were absolutely necessary.

His Excellency the Commander-in-Chief was the next speaker. He appeared to object to the Bill altogether. He considered that it invested the Lieutenant Governor with a despotic power in regard to taxation; that on his mere fiat any amount of money might be raised without any regard to the wishes of the inhabitants of the towns. His Excellency told them also of the wasteful expenditure from the local funds which he had noticed in some parts of the country, and of the evils of the octroi. He also drew an unfavourable comparison as regarded this Bill, between it and the existing Municipal Act (No. XXVI of 1850). He considered that, under that Act, the inhabitants really had some voice in regard to the matter of taxation, as the Act could not be introduced unless they desired it; and he thought that no sufficient reasons had been

duced for the substitution of a new Act. MR. BRANDRETH thought that most of the objections which had been taken to this Bill would be found to lie equally against the existing Municipal Act. No limit was placed by that Act on the amount of taxation; the octroi tax was there recognized; the Municipal Commissioners were all to be appointed at the sole will of the Government; the inhabitants could not elect their Commissioners, and, in regard to the matter of accounts and estimates, the Committees were left much more unchecked than they would be if this Bill became law. Notwithstanding the objections raised by His Excellency the Commander-in-Chief, MR. BRANDRETH trusted that the Council generally would see that a new Act was really necessary; some of the reasons for it were given in the statement which he had annexed to the Bill. Now that a regular organized police-force, with a Police Superintendent at its head, had been established in every district, it was surely desirable that the police in large towns should be a part of that body; that their number should be finally decided by the Local Government, and that the Local Government should be able to require every Municipal Committee to provide out of its funds, in the first instance, for the maintenance of the police establishments. In a matter, also, so obviously necessary as the construction of public works, and the giving effect to useful sanitary measures in towns, it was surely advisable that the Local Government should be empowered so far to take the initiative as to require the appointment of Municipal Committees for these purposes, and that it should not be required to go through the somewhat absurd formality provided by the existing Act, which was not well suited to the circumstances of the country, of calling upon the mass of the inhabitants of such towns to decide whether they would have the Act or not; that was, to decide whether they would have their town clean or dirty, healthy or unhealthy; whether they would have proper roads, streets and drains constructed, or whether they would do without them. This Bill also allowed of provision being made by the Committees, out of the municipal funds, for the establishment of schools—a provision which was not recognized in the existing Act—and also allowed the Local Government to exercise a greater check on the proceedings of the Committees, in the way of requiring estimates and accounts and cancelling any of their proceedings that were objectionable, than it could exercise under the existing Act; and considering how ignorant of their duties, however willingly they might perform them, many of these Committees would probably be in the first instance, it seemed to him most desirable that the Local Government should be able to exercise that extra control over their proceedings which was given by this Bill. It would be observed that two-thirds of the Municipal Commissioners at least must be inhabitants of the town for which they were appointed; and, considering that it could not for a moment be supposed that the object of the Local Government

in making these appointments would be to oppress the people and extort money from them, but, on the contrary, that it could only be supposed that the object of the Government would be to appoint the most intelligent persons to represent the rest of the inhabitants, it seemed to him that as much precaution, care and attention to the wishes of the inhabitants in general would be insured, in regard to this matter of taxation, as could reasonably be required and was suitable to the circumstances of the country. His Excellency had concluded that there was a better guarantee for municipal taxation being in accordance with the wishes of the people under the existing Municipal Act, than there would be under this Bill, in consequence of the inhabitants of a town being required to declare themselves for or against the adoption of the existing Act before it could be introduced. MR. BRANDRETH thought, however, that the observation of his Hon'ble friend Sir W. Muir on this subject would have satisfied the Council, that the ascertaining of the wishes of the inhabitants might become a mere formality, and that the mass of the inhabitants would not really have, on account of its observance, any voice in regard to taxation of their town, on His Excellency's supposition of the Government intending to act despotically in the matter without any consideration for the people. As regarded the wasteful expenditure of local funds which His Excellency had noticed in some parts of the country, and which he apparently thought would be still less capable of check by the passing of this Bill, he would remark that what were usually called local funds were the ferry fund, the road fund, the local agency fund; and that they were generally distinguished by this name from the municipal funds, which were alone treated of in this Bill. Over the former class of funds Municipal Committees had no control whatever, and perhaps, if enquiries were made, it would be found that the wasteful expenditure which His Excellency noticed took place from these local funds, and that it would not have taken place if the expenditure had been under the control of Municipal Committees.

His Right Hon'ble friend Mr. Massey, though he agreed to the Bill going to a Select Committee, was yet by no means satisfied with the Bill as it stood. His principal objections appeared to relate to the power of initiating taxation, which he supposed to be conferred by the Bill on the Local Government, and to the power given of raising money on debentures. It was not intended, however, to give the first-mentioned power to the Lieutenant Governor; nor did he think that the eleventh section of the Bill, which he supposed was what his Right Hon'ble friend referred to, would bear the interpretation which had been put on it; or if it did, the wording of it could be altered in Committee. All that was intended by that section was to provide that the taxes fixed by the Committee should be equitably assessed and distributed on individuals; that no

individual should have to pay more than the amount properly due from him, and that appeals from the assessments or rates should, if necessary, take place. As regarded the raising money on debentures, if it was considered that it would be any safeguard against the abuse of the power, the previous consent of the Governor General in Council might be required.

The last speaker was his Hon'ble friend Mr. Cockerell. He considered that some limit ought to be put on the amount of taxation, if raised from real property, and that the power given in the 27th section to the Lieutenant Governor, of cancelling the proceedings of Committees, would be very galling to them, and make the members hesitate to accept office if they were thus liable to be interfered with. It seemed to him, however, that it would be impossible to limit the amount of taxation in any satisfactory manner; and as to the power given to the Lieutenant Governor under section 27, he thought that it was advisable that the Lieutenant Governor should have this power, with reference to the character of most of the Committees that were likely to be appointed in the North-Western Provinces. This section, which was taken from the Panjáb Act, was agreed to after a great deal of consideration. With those observations he again moved that the Bill be referred to a Select Committee.

His Excellency the President thought it was a pity that the principle of the Bill had not been more fully discussed in the Executive Council before the Hon'ble Mr. Brandreth had obtained leave to introduce it. At the same time His Excellency was free to admit that he did not think that any harm had arisen in consequence of that neglect. The debate which had taken place had been a valuable one, and had elicited many useful points, which would no doubt be carefully considered in Committee. As regarded the objection of His Excellency the Commander-in-Chief to the Bill itself in a military point of view, the President thought it right to remind the Council that this Bill did no more than maintain the principle confirmed so long ago as the year 1864 as regarded taxation of military persons in cantonments. The Act then passed was supported by the opinions of the late Commander-in-Chief of the Army and the then Military Member of Council. At the same time, the President was fully aware that His Excellency the Commander-in-Chief had always been opposed to that principle, and it was consequently, and in deference to his views, that the Government of India had lately issued a circular directing the chief local authorities to consult the chief military authorities in the Provinces, and report on the subject; and, as far as His Excellency the President was concerned, he thought it would have been well that, pending

r eplies to that circular, this Bill had not been introduced. At the same time the Committee to whom the Bill would be referred would perhaps bear in mind that circular, and postpone their final decision on the merits of the Bill until those replies should have been received.

As regarded the abuse of the octroi system, and its tendency to abuse, HIS EXCELLENCY was very much in accord with the Commander-in-Chief. THE PRESIDENT did think that there was a great tendency for that duty to run into a transit-duty, and HIS EXCELLENCY recollected very well the remarks made to him by Mr. John Strachey on that subject while he was in Oudh. But at the same time it was certain that, in many places in the North-Western Provinces, as in the Panjáb, where the people were allowed to give their opinion, they greatly preferred octroi duties to any direct system of taxation for municipal purposes. On that ground originally in the Panjáb, octroi duties, though in opposition to the principles of political economy, were introduced, and from thence the system had been extended to the North-Western Provinces, Oudh and the Central Provinces. HIS EXCELLENCY therefore thought it right to say that, while allowing the imposition of that system of taxation, the local authorities, and particularly the Lieutenant Governor of the North-Western Provinces, should be most careful to see that they were not abused.

There was another point to which His Excellency the Commander-in-Chief had referred. In many places, where undeniable improvements had been effected, they had been made more for the advantage of Europeans than Natives, whereas no doubt the greater portion of the funds had been paid by Natives. That was a point, also, which was deserving of consideration.

With regard to the question of returns of accounts being made to the Government of India, HIS EXCELLENCY was somewhat doubtful. In the first place you would burden the Government with an enormous mass of papers, which it had no time to digest and consider. HIS EXCELLENCY'S belief was, with every respect to the Financial Department, that if those papers were sent up, they would not be sifted and digested and criticized in a way which would make them of any use whatever. There was also this objection that, if those papers came, and the Government did not exercise a check on them, then the Government of India practically became responsible, certainly morally responsible, for any evils that grew up; whereas, if those papers did not come up to the Government of India, they would remain with the local authorities, and those authorities would be held responsible.

Then, on the question of policy as to borrowing. It seemed to HIS EXCELLENCY that if you limited the amount that could be borrowed in the way

Mr. Brandreth had set forth in his opening speech, practically a sufficient check would be imposed His Excellency did not think it was the habit of municipalities in the interior to borrow money: he thought, on the contrary, that the feeling of the citizens of towns would be adverse to such a system. As far as His Excellency's experience went, the dangers of that system existed more in the presidency towns than in the mofussil; but he had on one or two occasions seen cases where money to a moderate extent had been borrowed entirely with the consent of the Native inhabitants, and great and beneficial improvements had been made, and those sums had been duly repaid. His Excellency alluded particularly to the case of Lahore, where the glacis of the town had been turned into gardens very much to the health of the town, and numerous members of the Native community had expressed themselves as very much pleased at the result.

Then, as to the fear that had been expressed that the local authorities would have too much power, and that there would be a tendency to abuse it, His Excellency thought that, unless some considerable power were given to those authorities, the system of municipal taxation and municipal expenditure would break down. The people on the whole were really indifferent to the subject of municipal and local improvements: if left to themselves, a great majority would prefer that there should be filth and insalubrity, rather than that they should be taxed; but if the initiative was taken in a kindly and gentle way by the local officers, if the leading Native citizens were consulted, and improvements were carried out by degrees, then His Excellency thought, particularly where the Local Government took the initiative, the Natives would gladly follow the lead and accept a system of municipal government, which, if left to themselves, they would really oppose. His Excellency thought that several Hon'ble Members would bear him out in that statement.

Then, as to the question of the appointment of Committees, it appeared to His Excellency that a considerable majority of such Committees would be independent members, who could exercise their independent votes; and if such members, having that independence, were willing to be guided and led by the official members, His Excellency thought that, on the whole, there would be a gain and not loss. The Executive Members of Council would no doubt remember that, for several years, the Government had been trying to induce towns throughout British India to bear a portion of the cost of their police, and they had been urging the adoption of sanitary improvements and arrangements, the establishment of hospitals, the construction of saráís, and all those numerous matters which result in such great improvement to the country and benefit to the inhabitants, particularly the poor. To enable such improvements to be carried

out, they must give the Commissioners some power to raise funds for the purpose. If, on the one hand, they urged the local authorities to induce the people to come forward, and when they did come forward and asked for a law inaugurating this system, they checked and restrained them, what gain was there ?

One objection also was that the authority given to the Committees was to be subject to the sanction of the Local Government. HIS EXCELLENCY thought that was clearly to the interest of the people. He did not think that it put an arbitrary power in the hands of the Local Government. The practical effect of that provision would be to prevent the Committee or any influential members of the Committee (Commissioners, Magistrates and the like) from persuading the body to which they belonged to do more than they were willing to do. The section seemed to provide for that class of cases. The Lieutenant Governor would hear of the doings of the Committee in various ways; there would be many who would be willing to tell him by petition or otherwise of what was being done. He would be told that such a thing was going on, and that the people did not oppose it from fear of the Magistrate. The Lieutenant Governor would then tell the Magistrate that it ought not to be done. He would say "No doubt you mean well, but I object to the thing being done". HIS EXCELLENCY therefore thought that the section would practically work well.

The Motion was put and agreed to.

COTTON FRAUDS' BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the presentation of the report of the Select Committee on the Bill for the suppression of Frauds in the Cotton Trade.

Leave was granted.

The Hon'ble MR. SHAW STEWART moved that the Hon'ble Mr. Cockerell be added to the Select Committee on the Bill for the suppression of Frauds in the Cotton Trade.

The Motion was put and agreed to.

SUNDRY BILLS.

The Right Hon'ble MR. MASSEY moved that the Hon'ble Mr. Cockerell be added to the Select Committees on the following Bills:—

To consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea.

For repealing certain enactments which have ceased to be in force or have become unnecessary.

To define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY moved that the Hon'ble Khwája 'Abd-ul-ghani be added to the Select Committees on the following Bills:—

To define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Çochin) ——The Hon'ble Mr. Taylor and the Mover.

On the Bill to make better provision for the appointment of Municipal Committees in towns in the North-Western Provinces and for other purposes ——The Right Hon'ble Mr. Massey, the Hon'ble Major General Sir H. M. Durand, the Hon'ble Messrs. Shaw Stewart and Cockerell and the Mover.

The Council adjourned till the 17th January 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 10*th January* 1867.

Office Supdt. Govt. Printing.—No. 234 L. C.—16-1-68.—180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.

PEPPER DUTY (COCHIN) BILL.

The Right Hon'ble MR. MASSEY presented the report of the Select Committee on the Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Cochin).

PANJÁB TENANCY BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to define and amend the law relating to the tenancy of land in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in six weeks. It would not be necessary for him to say much about the reasons for introducing this Bill, by way of preface, before he proceeded to consider the particular contents of the Bill itself. Bengal and the North-Western Provinces had their Acts, which provided for the fixing of rents and for the recognition of rights of occupancy among tenants. A Bill on the same subject for the Province of Oudh had recently been introduced into this Council. There had been as yet no legislative enactment for the Province of the Panjáb. The object of this Bill, therefore, was to make provision regarding these matters for the Panjáb, in accordance with the special requirements and peculiar circum-

stances of that Province. Whatever appeared applicable to the requirements of the Panjáb had been taken from the North-Western Provinces' Acts and the Oudh Bill, but it would be perceived, notwithstanding, that there were very material differences in other matters between the provisions that had been made for these Provinces and what was proposed for the Panjáb.

In rendering his account of this Bill, he would not trouble the Council by entering into every detail. He intended to speak only of those provisions of the Bill which appeared to him more especially to require explanation, and particularly of those provisions which differed most from what had been enacted for other Provinces. He was afraid, however, that, in speaking of those provisions, he should have to occupy the time of the Council considerably; but he trusted the great importance of the subject to so large a part of the empire as the Panjáb, and the great interest it had recently excited in that Province, would be deemed a sufficient excuse for doing so. He passed over the first Part, which was preliminary only, and came to the second Part, which treated of the occupancy of tenants.

This subject of the occupancy-rights of tenants was no doubt full of difficulty, but the difficulty was almost entirely of their own creation, from their settlement officers and Civil Courts having previously altogether ignored the rights of the land-owners. The proceedings, however, of the Settlement Commissioner, Mr. Prinsep, rendered it impossible to ignore those rights any longer. The result of Mr. Prinsep's enquiries with reference to some ten thousand cases in some of the most important districts in the Panjáb, if correct, was that some three-fourths of those tenants who were formerly supposed to have rights of occupancy, were properly mere tenants-at-will. Colonel Lake, the late Financial Commissioner, who visited those districts and tested some of Mr. Prinsep's proceedings, by no means endorsed the whole of Mr. Prinsep's conclusions; still it could not be possibly said that these conclusions were equally without foundation in regard to all classes of tenants. It was the duty of settlement officers in the Panjáb, besides measuring the land and fixing the assessment, to call upon the people, while their minds were calm and before disputes had actually arisen, to state what the village customs were upon all points likely to produce disputes among them. These customs were then recorded in what was termed the *wájib-ul-'arz*, or village administration paper, and this document was always regarded by the Courts as containing the most valuable evidence with reference to all matters of which it treated. By the help of this document, disputes of a more complicated nature than disputes relating to the rights of occupancy of tenants had frequently been satisfactorily decided. For instance, many matters connected with inheritance and with the

disposition of landed property in villages were regulated, not by Hindú or Muhammadan law, but by local customs of a radically different nature, which were recorded in the administration paper; and, in regard to all such customs, the administration paper was usually received as valid evidence. Unfortunately the same pains were not taken to ascertain the village customs in regard to the rights of occupancy of tenants. No doubt the land-owners themselves were backward in urging their claims when the settlements were first made. They were probably for the most part not in immediate want of the land held by their tenants, and they were not aware how valuable much of the land would become under the operation of a moderate assessment. His Excellency the President was aware, MR. BRANDRETH found, at an early period when he held the office of Chief Commissioner of the Panjáb that, by the custom of the Panjáb, tenants could not acquire rights of occupancy by mere lapse of time; and MR. BRANDRETH found that, in 1855, some instructions were issued by His Excellency for the guidance of settlement officers, to the effect that they ought to be aware that it was the nature, quite as much as the length, of occupancy that entitled a cultivator to privileges. Unfortunately the instructions thus issued by His Excellency did not appear to have met with the attention they deserved. The Panjáb was what was called a Non-Regulation Province; still it was generally understood that, as far as practicable, the spirit at least of the Rules and Regulations in force in the North-Western Provinces and Bengal should be followed. Now, according to those Rules, it would appear that cultivators could not ordinarily be ejected so long as they paid the rates fixed on their fields. In the "Directions for Settlement Officers in the North-Western Provinces," which was the only guide-book which their first settlement officers in the Panjáb possessed, it was expressly laid down that "those cultivators who have for a course of years occupied the same field at the same or at equitable rates, are held to possess the right of continued occupancy, while those whose tenure is not similarly sanctioned are considered tenants-at-will." In accordance with the spirit of these instructions, the Panjáb settlement officers appeared to have recorded all tenants who had cultivated their lands continuously for certain periods, as possessing rights of occupancy, without at all regarding any other circumstances or conditions connected with their occupancy. The Civil Courts also had subsequently for the most part, except with regard to a limited class of cases, acted on the same principles.

With the view of ascertaining what power was formerly exercised by land-owners in the Panjáb, in regard to the ejectment of tenants, the Local Government recently addressed some enquiries on the subject, not only to its own officers, but to persons also who had held office under the Sikh Government, or who were otherwise likely to be well acquainted with the extent to which

the rights of land-owners were recognized under that Government. MR. BRANDRETH had there a printed abstract of the replies to some of these enquiries. Unfortunately this evidence lost much of its value from its not sufficiently appearing to what parts of the country and to what classes of tenants it related, from what particular instances it had been obtained, and from its not being given with sufficient details and particulars to show that the subject of the enquiries had been fully understood. Thus, while from many of the replies it would appear that tenants of long standing were never evicted, from other replies again it might be gathered that tenants were evicted at the sole pleasure of the land-owners, without any regard whatever to length of occupancy or other circumstances. From the whole of this evidence, however, as well as from other evidence which he had there also, and which was previously collected under the orders of the Financial Commissioner, he thought it might be inferred on the one hand that, in some parts of the country at all events, if not over the greater part of the Panjáb, the *kárdárs* or officers of Government treated both land-owners and tenants alike, allowed the so-called land-owners no share at all in the rent paid by the tenants, and did not permit them to interfere in any way whatever with the tenants. Thus, the possession of such tenants appeared to have been what was called *adverse* possession. Again, there were tenants who, from having sunk wells or improved the land in any other expensive manner, and from having shared in profits and losses with the land-owners, or from having gone forth to fight the battles of their village with other villages, and in other ways also, were considered to have rights of occupancy: on the other hand he thought it might be inferred from the same evidence that, in other parts of the country, there were land-owners of more power and influence, who either held leases direct from the Sikh Government, or, if the rent was collected in kind, appropriated to themselves a considerable portion of what was paid by the tenants, who, there was reason to believe, did what they pleased with the land cultivated by their tenants, so long as they provided for its cultivation, or otherwise satisfied the claim of the Government. Tenants who were thus liable to be ejected were no doubt erroneously entered in the settlement records as having rights of occupancy on account of mere length of possession. He thought it might certainly be inferred from the evidence he had there, both that rights of occupancy under certain circumstances were acquired, independently of length of possession, while, under other circumstances, such rights should not be held to have accrued by mere length of occupancy.

They had to determine how this important question should now be dealt with. The claims of the land-owners had no doubt in many instances been in abeyance during the whole period of the Sikh Rule and up to the present

time. Were these latent claims to be now revived, and, if so, to what extent? Some officers maintained that, even though some errors might have been committed in the preparation of the settlement records, these records were yet a sort of guarantee by the land-owners of the rights of the tenants; that the decisions of the Courts had been ever since almost invariably in accordance with the settlement records; that the relationship between land-owners and tenants had become settled, and engagements had been entered into in accordance with these records, and that any attempt to disturb them, after they had been acted on during so long a course of years, would be very impolitic and detrimental to the best interests of the village communities. Other officers again appeared to think that, if certain persons were admitted, even by the tenants themselves who cultivated the land, to be the owners of the land, it should be presumed that they had a complete title to the land until the contrary was proved, and that the burthen of proof in this case should rest on the tenants who denied the completeness of the title. There appeared to be some degree of truth in both these views: the object of this part of the Bill was to mediate between these extreme opinions, or rather, it was not so much an attempt to settle anything definitely, as to open a way for the claims of the land-owners being dealt with by the settlement officers or by the Civil Courts. No rights that were in abeyance during the Sikh Rule would be recognised by this Bill. Land-owners, however, would be permitted to revive claims to the land occupied by tenants, which they had hitherto been prevented bringing from the wrong notions that had been entertained during British Rule of the merits of their claims; but subject to this condition, that those tenants who had hitherto been considered as tenants having rights of occupancy, should be presumed to possess such rights until the contrary was proved, and that the burthen of proof should rest on the land-owners who denied that the tenants had rights of occupancy. It would be observed—he referred to section 4—that only on one condition had rights of occupancy been absolutely conferred on tenants—the condition of their having formerly possessed proprietary rights in the lands occupied by them. He believed it would nowhere be denied that such tenants had rights of occupancy. This class of tenants, however, was by no means a numerous class. It would no doubt be very useful for the guidance of the Courts and of the people, if other conditions of occupancy could also be detailed; if it could be positively laid down that, under certain circumstances, tenants acquired a right of occupancy; or that, under certain other circumstances, tenants never could acquire rights of occupancy. Mr. Prinsep, he believed, considered that by village custom several classes of tenants had no rights of occupancy. Among Mr. Prinsep's conclusions on this subject, he found the following enumerated in a memorandum which he had there by the late Financial Commissioner, Colonel

Lake—1*st*, that no shareholder in a common property had a right to occupy, as hereditary cultivator, any portion of that common holding; 2*nd*, that no shareholder cultivating the land of another shareholder of the same estate, could be considered a hereditary cultivator; 3*rd*, that non-resident tenants had no right to a privileged occupancy; 4*th*, that village servants had no right to occupy as hereditary cultivators. It was to this first class of tenants, namely, those tenants who cultivated lands in which they had also joint proprietary rights with others who did not cultivate, that he (MR. BRANDRETH) alluded, when he said that the decisions of the Courts in regard to one class of cases had not been in accordance with the settlement records. It became evident in most cases of dispute about the division of the common land of a village, that none of the co-sharers had by the custom of the village any right to the hereditary occupancy of such land; the Courts therefore could not do otherwise than decide such disputes in accordance with village custom: but one of the Native members of the Lahore Committee to which he referred when he moved for leave to introduce this Bill pointed out that there might be an exception even to this general custom; as, for instance, when a man who had formerly been a mere tenant, afterwards acquired a proprietary share in the land cultivated by him. Under such circumstances, this gentleman did not consider that the tenant should lose his right of occupancy, and there might be other exceptions also. If, therefore, this class of tenants was not universally debarred from acquiring rights of occupancy, still less was it probable that such would be the case with reference to the remaining classes enumerated by Mr. Prinsep, or, even if his conclusions were correct in regard to the particular districts over which his recent enquiries had extended, it would not be safe to incorporate them in an Act applicable to the whole of the Panjáb. It was probable that village custom in one part of the country would be found to differ very materially from village custom in another part. He believed Mr. Prinsep would be better satisfied with this Bill, if the different classes of tenants enumerated by him, even if they should not be held to be absolutely debarred from ever acquiring proprietary rights, were specially excluded from any presumption being raised in their favour by the fifth section of the Bill; but in the present state of his information he could not agree to this. The number of tenants with rights of occupancy in the Panjáb might perhaps be estimated somewhat vaguely at about 3,00,000; the number of tenants-at-will at about 6,00,000, and the number of proprietary cultivators at about 12,00,000. Some statistics on the subject were published in 1860; they were not supposed, however, to be very accurate. What number of tenants hitherto supposed to have rights of occupancy would become liable to be ejected from their holdings if the Bill was passed, he could not pretend to say; but, as the whole burthen of proving they had not such rights was thrown

on the land-owners, perhaps the number would not be very great. On the other hand, those land-owners who clearly had rights of ejectment, and complained of having been deprived of them under British Rule, would, he hoped, have no great difficulty in re-establishing their rights in the way that would be open to them if this Bill became law. The opening of the Courts to such suits would also act as a safety-valve for letting out any real discontent that might exist, but he trusted that too much outside influence would not be brought to bear on the land-owners; that they would not be urged to flood the Courts with suits by over-zealous settlement officers. What Colonel Lake said in the memorandum to which he had already referred was worthy of notice, as a caution against too much zeal in dealing with this tenant-right question, namely, that he had observed throughout, after visiting the districts over which Mr. Prinsep's operations had extended, that European officers appeared to be more interested in the question than the people themselves. It might be said, perhaps, that this Bill left the question of occupancy-rights in a state of apparent uncertainty. He did not see how it could be otherwise, unless, as in Act X of 1859, a tenant were allowed to claim a right of occupancy after cultivating his land for a certain period; but the whole object of this part of the Bill was to prevent any title being acquired in that way. The tenants ought to know of themselves perfectly well whether or not they were really entitled to rights of occupancy; or two or three suits here and there would settle the matter; or the general enquiries that had recently been made by their present settlement officers ought to make it sufficiently clear in most cases what classes of tenants had, and what classes of tenants had not, rights of occupancy in those districts that were under settlement. There was nothing in this Bill to prevent the Government, if it should think it worth while, making such enquiries in every district. It might be observed, also, that this Bill left the rights of occupancy no more uncertain, than inheritance-rights, life-interests, many other important rights in villages, with reference to which custom varied greatly, were left uncertain as regarded the passing of any Act for the purpose of settling them. It was assumed in the Panjáb Civil Code that the village administration paper would contain sufficient information for the guidance of the Courts in regard to all matters relative to village custom which it was not expedient to provide for by positive enactment. This Bill took away nothing from the tenant that he originally had, and gave him nothing that he originally had not: all it did was to prevent these seventeen years that had elapsed since the annexation of the Panjáb, during which the tenant's occupancy had not been questioned, and the long course of the decisions of the Courts, from conclusively telling against or being used as precedents against the claims of the land-owner, if he had really a good claim. Mr. Prinsep had another plan for settling all questions regarding rights of occupancy--or

rather, as it seemed to him, it was a plan for taking away all rights of occupancy;—it was consequently a plan that he could not approve of. Mr. Prinsep did not let the matter alone until a disagreement arose between the parties which either party wished to have settled; but he compelled a dispute between them by insisting on a reply on the spot to his enquiries regarding each individual tenant, as to whether the land-owner could turn out the tenant or not. The land-owner usually replied that he could turn him out, and the tenant that he could not; and then, in accordance with Mr. Prinsep's account of the procedure, quoted by Colonel Lake, the question at issue was decided by a village pancháyat, regarding which "it was a strict rule to select the members at random from the crowd at the time (not before) of the actual sitting for enquiring into the status of the tenants." Then, he gathered from another paper, Mr. Prinsep's proposal was that, if these awards of the pancháyats were not contested within one year by the institution of a civil suit, they should hold good for ever. His Excellency the President, when holding the office of Chief Commissioner in the Panjáb, directed that all settlement officers should be invested with the powers of Civil Judges. He did this, as MR. BRANDRETH had always understood, to ensure a finality being given to their decisions, and to put a stop altogether to summary decisions which could be contested in other Courts; and in accordance with what he had supposed to be His Excellency's views on the subject, settlement officers in the Panjáb to this day always exercised the powers of Civil Courts. There was a general Act to provide for the limitation of suits, No. XIV of 1859, which was not yet in force in the Panjáb, but was to be applicable to suits instituted after some future date; he did not now remember the exact date. That Act no doubt contained a section which provided that settlement awards must be contested within three years. If such awards as Mr. Prinsep's were contrary to the settlement precedure in force in the Panjáb, then that particular section would not apply to them; but if it did apply, then it was a question whether it ought not to be repealed. It must be remembered that the object of Mr. Prinsep's system of awards was to set aside the entries of former settlements. As pointed out by Colonel Lake, under the present Panjáb law, a formal entry in the settlement record must be called in question by a regular suit within twelve years from the date of the final English report of the settlement officer, and any claim to set it aside after that date could not be entertained. As regarded some settlements, this period had already passed, and twelve years, he believed, all but a few months, had elapsed since these settlements which Mr. Prinsep was now revising were made. Up to the present time, therefore, it had been required of the land-owner to prove that the former settlement record was incorrect, if he wished it altered; and now to turn the scale, when only a few months of the twelve years remained, as Mr. Prinsep proposed,

and throw on the tenant the burthen of proving that the same record was correct would, it appeared to him, be very unfair to the tenant. He certainly thought this twelve years' limitation rule ought to be repealed altogether; but such a repeal ought to be made the subject of separate legislation, as the rule applied to many other matters besides tenants' rights of occupancy. Under the circumstances he had stated, however, he could not conceive anything more unfair towards the tenants than Mr. Prinsep's plan would be, if he understood it aright. When tenants, who were registered at a former settlement as having rights of occupancy, were now summarily declared not to have such right—if they had no direct quarrels with their land-owner, and no present expectation of being turned out of their lands, as was doubtless the case with the great majority of them—they might be quite sure that they never would, nor could it be reasonably expected that they should, go into the Civil Courts within a year at the present very high cost of suits, in the hope of having the settlement awards against them set aside, especially when, in most cases, Mr. Prinsep had taken away all motive for immediate action on the part of the tenants, by requiring the land-owners to give them leases for periods generally extending much beyond the period of one year, or even three years, within whichever period it might be proposed that the tenants must bring regular suits if they wished the settlement awards to be set aside. Mr. Prinsep was doubtless entitled to credit for insisting on the recognition of all rights claimed by the land-owners, which had hitherto from mistaken notions not been recognized; but in that plan he seemed to MR. BRANDRETH to go into the other extreme of being unjust to the tenants.

The third Part of the Bill related to rent. It would be seen, with regard to the enhancement of rent, that, by section 8 of the Bill, the rent was not to be enhanced beyond certain limits there laid down. These limits were no doubt somewhat arbitrary; but unless some limits were fixed, the rights of occupancy that had been provided for in the former part of the Bill might have no meaning. The rent might be enhanced to within twenty-five per cent. of the rack-rent of the land, if the tenant had paid no rent hitherto to the land-owner, or paid none previously to the regular settlement: it might be enhanced to within fifteen per cent. of the rack-rent if the land-owner previously enjoyed any share of the rent. It might be asked why, if the so-called land-owners got no share formerly in the rent of the land cultivated by the so-called tenants, the land-owners were now held to be entitled to a share in the rent? and he would give this explanation of the matter. In those parts of the country where the land-owners got no share in the

rent, the reason of this was that the Sikh Government took the whole net produce of the land from every cultivator, whether proprietary or non-proprietary, and thus left nothing which the land-owner could take; and that, in the first instance, when the country became subject to the British Government, no distinction was made between land-owner and tenant, as regarded the matter of assessment, where none had existed before: nor did the land-owners themselves, so far as he was aware, make any claim, in the early periods of our Rule, to rent under these circumstances from the tenants. The British Government only professed to take half the net produce of the land as land-revenue, and therefore, afterwards, it came to be considered, and he had no doubt justly considered, that these cultivators, who admitted themselves to be only tenants, who entered into no engagement with the Government for the payment of the land-revenue, who had no concern with the management of the village, and who had no transferable property in the land cultivated by them, ought not to be allowed to appropriate the whole of the remaining portion of the net produce, but that some share in this portion should be given to the acknowledged land-owners. The maximum proportion of the net produce claimable from this class of tenants, however, had been fixed at ten per cent. less than the maximum claimable from other tenants, who had been in the habit of always paying rent at a higher rate than that of the land-revenue. All other distinctions which it might be necessary to draw had been left to the discretion of the Courts in cases of dispute; nor was it, he thought, a discretion which they would find any difficulty in exercising. After a good deal of experience in such matters, he should say that the main points of disagreement between the land-owner and tenant were that the tenant objected to being turned out of his holding, and that the land-owner, if he had been in the habit of taking his rent in kind, objected to having that rent converted into a money rent; but it was a matter of comparative indifference to the tenant whether he had to pay a little more or a little less rent, especially if it was a money rent. Some hundreds of rent-claims, he understood, had been settled with the utmost ease, and to the mutual satisfaction of the parties, by the settlement officers employed under Mr. Prinsep's orders. It had been provided further on, in section 13, that no commutation of rent in kind into rent in money should in future take place without the consent of the land-owner. Such commutations had ceased to be made, he believed, for some years; but they had taken place to a considerable extent during the early part of our administration of the Panjáb. These unquestionably were the cause of much ill-feeling, and in many cases utterly destroyed that common interest and kindly relation which formerly subsisted between land-owners and tenants. This was another instance of the evil produced by too closely following what was done in the North-Western Provinces, without sufficiently considering

whether it would suit the Panjáb. The present Lieutenant Governor of the Panjáb he believed—than whom no one probably knew better what the general feeling of the country was in regard to such matters,—entirely disapproved of any compulsory alteration in the mode of paying rent. This payment in kind, or *ádhá-dána* system as it was often called, from the gross produce being equally divided between the land-owner and tenant, appeared to correspond both in name and nature to the metayer system of Italy and some other European countries. Whether the metayer of Italy could claim of right a conversion of his produce rent into a cash rent, he was not aware, but he believed there was hardly any difference of opinion now in the Panjáb that such conversion should not be allowed merely on the application of the tenant against the wishes of the land-owner.

The few next sections in the Bill, included under Part IV, treated of ejectment, abandonment, relinquishment and sub-leases, but he did not think he need detain the Council by any remarks on these sections, as their purport was perhaps sufficiently obvious without explanation.

The fifth Part of the Bill related to certain disabilities which might be removed by payment of compensation. There were, no doubt, some novelties in the way of legislation in this part of the Bill. The 26th section, giving the land-owner the power to appropriate the land of any tenant having a right of occupancy, if the land in his own possession was not sufficient for the support both of himself and his household, had been adopted at the suggestion of the Lahore Committee. He had adopted their suggestion with some hesitation. It might be asked why, if after all the facilities which had been given to the land-owner by a former part of this Bill for disproving the right of occupancy claimed by the tenant, the land-owner was unable to disprove it and the tenant's right of occupancy was fully recognized—why, under such circumstances, should the tenant be turned out of his holding? As regarded the market-price of the land, which it was proposed that the tenant should receive, it might be said that sales of land in most parts of the country were so very uncommon, and the pecuniary value of land was so little understood, that the market-price would be no equivalent for what the land was worth to the tenant. The Committee, however, thought that there ought to be some such provision as that made in this section. The Native members of the Committee in particular were unanimously in favour of such a provision. They maintained, he remembered, that it was quite opposed to the sense of the country, and to all their ideas of right that, when the land had become so sub-divided that there was no longer room for both land-owners and tenants to cultivate, the

land-owners to whom the land belonged should have to go into perpetual exile, while the tenants remained in possession. That was a result, they thought, that ought never to be permitted; and though the tenants might have some right of occupancy, which ought not to be interfered with unless upon such an urgent necessity as that of the land cultivated by the land-owners themselves not being sufficient for their support, yet, when such a necessity was shown, the tenants would be more than sufficiently compensated for having to give up their land if its market-value were paid to them.

The next section, 27, regarding the right of tenants to alienate, contained a provision intended more especially for the benefit of the tenant. The tenant might have hitherto paid no rent other than the Government revenue, his interest in the land cultivated by him might be much greater than that of the so-called land-owner, yet by existing custom he was so bound to the land that, whatever his necessity might be, he had no right to transfer it to another; his simple right was to till his field himself, and if he attempted to do anything else, his right of occupancy ceased. By this section, under certain circumstances, if there was no immediate prospect of the land lapsing to the land-owner, the tenant would be allowed to alienate on payment of ten per cent. of the value to the land-owner.

The effect of the two sections of which he had last been speaking might be in some slight degree to diminish the evil of the excessive sub-division of land which had already taken place in many villages, and which was continually increasing under the peaceful rule of the British Government. Sub-divisions could not take place to the same extent under the Sikh administration, for the simple reason that so much smaller a share of the produce was left to the cultivators than they enjoyed under our lighter assessments; but it was evident that the people might become quite as poor by too minute sub-division under light assessments, as they would under heavy assessment, if the land were not so minutely sub-divided. Some of their settlement officers, in their reports, had recently remarked on the pressure of the assessment caused by there being too many mouths to feed, and from the land not being sufficient to support the cultivators in comfort. A land-owner had no power whatever, under existing law, to restrict the sub-division of an ancestral estate after his death among his heirs-at-law, however numerous they might be. A few years ago the holders of jágírs, or large revenue-free estates agreed, he believed, very generally to a proposal of the Supreme Government that such estates should devolve upon the eldest son only. He had reason for thinking that, in some parts of the country, the land-owners would readily agree to any reasonable proposal for preventing future excessive sub-division in small revenue-paying estates. He should like to

see power given to the Lieutenant Governor to restrict further sub-division in any village where the properties were already too small, and where he considered that such restrictions would not be opposed to the feelings of the people. A provision to that effect, however, would be beyond the scope of the present Bill, in which he professed to deal with the relations of land-owners and tenants towards each other.

The 28th section of the Bill allowed the tenant with a right of occupancy to plant and cut down trees, on agreeing to pay reasonable compensation to the land-owner. A tenant who paid in money was at liberty to sow what crops he pleased on his land; but a tree, according to the Panjáb Revenue Manual, which he believed correctly described the existing custom in many parts of the country, he could not cut down unless he required it for domestic use. He had consequently no inducement to plant trees, and considering the scarcity and increasing price of wood in many parts of the country, it certainly seemed desirable that he should be able to get rid of this disability on payment of compensation to the land-owner.

The sixth Part of the Bill treated of compensation for tenants' improvements. The clear and comprehensive description of the word "improvements" in section 33 had been adopted from the Oudh Bill. That Bill further, it appeared, allowed the tenant to make any improvement he pleased without reference to the landlord. Such a provision, however, would be opposed to the relation in this matter in which the tenant was considered to stand with reference to the land-owner in the Panjáb. It had therefore been provided in this Bill that the tenant-at-will should not receive compensation for improvements, unless they had been made with the permission of the land-owner; nor should the tenant having a right of occupancy, unless the improvements had been made, either with the permission of the land-owner, or unless the tenant had first given the land-owner the option of making them.

He had now noticed all the provisions of the Bill which appeared to him more especially to require explanation. He might have overlooked some matters which might provoke criticism; but he had no doubt the Council would think that he had said quite enough for one occasion, even if he had not already taxed its patience too far, and that all minor details at least had much better be dealt with by the Select Committee, should he obtain permission to refer this Bill for that purpose. He had prepared this Bill to the best of his present knowledge, but he did not in the least bind himself to defend every line of it to the last. He was quite open to advice on the subject, and would gladly adopt any good suggestions for the improvement of the Bill with which he

might be favoured. The Settlement Commissioner, Mr. Prinsep, had promised some more papers; Mr. Roberts, the Financial Commissioner, was writing a report; above all, the Lieutenant Governor, Sir Donald McLeod, had not yet expressed his views upon the Bill. No one knew more about the Panjáb than its present Lieutenant Governor, and he would doubtless direct attention to those matters in respect of which the Bill might require amendment. If MR. BRANDRETH had waited until the Lieutenant Governor had seen his proposals, he might have produced a better Bill in the first instance; but then he should not have been able to publish it in sufficient time before the conclusion of this session for its being well considered by the many experienced officers in the Panjáb, from some of whom he hoped to receive valuable suggestions. He would not think of asking the Council to pass the Bill until he learned the views of the Lieutenant Governor with regard to it, nor until he had seen the reports promised by Mr. Roberts and Mr. Prinsep, nor until the Bill had been published for a sufficient time to allow all those who were interested in the subject treated of to express their opinions. He trusted the Council would now allow this Bill to be referred to a Select Committee.

HIS HONOUR THE LIEUTENANT GOVERNOR said that, in the absence of all the papers on the subject of this Bill—both those containing the correspondence which had already taken place in the Panjáb, and those which were expected to be received—it was clear that the Council was not in a position to form any accurate opinion in regard to the Bill which it was now introduced. Some of the provisions of the Bill were, he thought, open to question; and there was one, especially, regarding which he should like to receive an explanation from the Hon'ble Mover. HIS HONOUR understood the Bill to be founded practically on the admission that mistakes had been made and wrong done on the occasion of the original settlement in the Panjáb; but that it was considered—looking to all the circumstances of the case, to the fact that tenants had enjoyed rights which were so erroneously bestowed on them now for a long series of years, and also, as stated by Mr. Brandreth, that, to a certain extent, land-owners were themselves remiss at that time in following up their claims,—that it was on the whole fair that the onus of proof should now be put on land-owners to show that tenants who were in the enjoyment of rights ought not to continue to enjoy them. That was the principle on which HIS HONOUR understood the fifth section to be based. But, after that, there came the sixth section, which appeared to him to be somewhat strange. After saying that every tenant whose name appeared on the records of a regular settlement sanctioned by the Local Government, as having a right of occupancy in land which he had continuously occupied from the date of entering his name in such settlement, should be presumed to have a right of

occupancy in the land so occupied, section 6 went on to say that any tenant who was not recorded as having a right of occupancy should, if there was reason for believing that he would have been so recorded if he had preferred his claim at the settlement, have the same rights and be subject to the same liabilities as other tenants who were recorded in the same settlement as having rights of occupancy. That struck HIS HONOUR at first sight as a strange provision; because the Bill, as he understood it, starting with the admission that such rights were in many instances wrongly given by the settlement officers, provided in section 6 that any tenants who had not been recorded as having rights of occupancy, but who, if they had claimed such rights at the time of settlement, would have been so recorded under the erroneous view which then prevailed, should now be considered to have been recorded as possessing such rights. HIS HONOUR could not understand the justice of a provision of that sort. It would require careful consideration before the Bill was passed.

Section 12 appeared to have been taken from the Oudh Bill, and provided that, in an ordinary suit for arrears of rent, the Court might allow a diminution of rent under certain circumstances; as, for instance, if the tenant could show that the produce of the land had been diminished by drought or hail or other calamity beyond the control of the tenant. The Court might then make a decree for arrears, with such remission as it might think equitable. HIS HONOUR could not help doubting whether a provision of that sort was suited to an every-day transaction between a landlord and his tenant. Such a provision would, he thought, lead to much litigation, and it would also be very difficult for the Courts to decide whether a tenant had suffered from drought, hail, or any other calamity. HIS HONOUR could understand a provision of that sort being suitable to an extraordinary occasion, such as the famine in Orissa, when the Government had, to a great extent, remitted the revenue on the condition that the landlords should themselves remit the rents of their tenants. But it seemed to HIS HONOUR doubtful whether a provision of that sort was applicable to ordinary times.

The Hon'ble Major General SIR H. M. DURAND said that, from the very immatured manner in which this Bill was introduced by its Hon'ble Mover, Mr. Brandreth, he wished it to be distinctly understood that his assent to its introduction in no way pledged him to support the Bill. The principles of a Bill were usually considered to be accepted when it was referred to a Committee; but in this instance his Hon'ble friend had brought the Bill before the Council with an avowal that he awaited reports from the Lieutenant Governor of the Panjáb, from Mr. Roberts, Mr. Prinsep, and

other functionaries, whose opinions on the Bill were more or less indispensable. That was an incomplete and somewhat unusual way of introducing a Bill of such importance; especially as there were many details in it which were open to much question and discussion. SIR H. DURAND would avoid now entering upon a consideration of various points which demanded attention, because, at the present stage, in which Mr. Brandreth merely launched the Bill, in a sort of tentative way, to court ventilation of the subject and general criticism from the Panjáb and elsewhere, it was desirable to await fuller information, and he guarded himself against being in any degree pledged to the various principles involved in the Bill. Therefore, until they were in possession of what the Hon'ble Mover himself awaited the reception of, and until discussion could be based on the deliberate opinions of the functionaries to whom he had referred, Sir H. DURAND held himself entirely free from any implied pledge or concurrence with the principles or details of the Bill by a simple assent to its introduction.

The Hon'ble SIR WILLIAM MUIR was disappointed to learn, from what had fallen from his Hon'ble friend the Mover of this Bill, that it had not yet received the sanction or approval of the Panjáb Government. He freely admitted that Mr. Brandreth himself was every way qualified by experience and acquaintance with the subject to take charge of the Bill; but it seemed to him that it was the province of the Local Government to originate such a measure. For the merits of the proposed law depended to a very great extent on points of local usage and right, of local history and administration, which were familiar to those at the head of the Province, but must be imperfectly known to this Council. Further, it appeared to him to be an advantage that the responsibility of measures of this kind should as far as possible be thrown upon the Local Government. It was hardly possible for this Council to take the initiative in special enactments depending so entirely on the peculiar habits and circumstances of distant provinces. He therefore thought that this belonged to a class of measures for which local legislation was specially suitable; or, if the Local Government did not possess that power, then at the least that the Bill should be promoted by the Lieutenant Governor himself. He might notice another peculiarity on the present occasion which rendered this the more necessary; the subject of the Bill was one on which extreme opinions were liable to be held on both sides, and in point of fact extreme opinions, as might have been expected, were maintained on both sides in the Panjáb. Those of his friend Mr. Edward Prinsep, the Settlement Commissioner, had been alluded to; and while he had a very high estimation of that officer's zeal and ability, it must be admitted that his views on the present topic had an extreme tinge. As already

stated by Mr. Brandreth, Colonel Lake had found, on local enquiry, that far greater interest and intensity of feeling were displayed by the officers of Government on this matter than by the people themselves. These, as elsewhere, were indifferent on the subject; and, so long as their present rights were not actually touched by ejectment or other immediate ground of complaint, were content. Now, as had been explained by Mr. Brandreth, on the enquiries and measures of Mr. Prinsep, which had for their object a radical change in the former settlement, the present position of the ryots had been secured by leases which would prevent their being ousted for some time to come. There was a danger, therefore, that officers holding one class of views should assume an absence of complaint, really owing to indifference, to be a confirmation of the equity and justice of their principles. A danger of this kind being incident to enquiries prosecuted by officers holding decided views on either class of opinions on the present question, seemed to him an additional reason why the Government should have interposed its authority as moderator, and itself laid down the principles to be followed, and proposed such legislation as might be necessary.

The history of the rights in question was peculiar. Before our occupation of the Panjáb, the respective positions of the proprietor and the tenant were vague and unsettled. The former seemed to have possessed no such thing as an absolute right of property in our sense of the term: he was liable to constant interference. And so also with the ryot: he had no very defined right; but in point of fact he was rarely interfered with, and the Committee referred to by Mr. Brandreth had given it as their opinion that, if now declared to be tenants-at-will, this class would be absolutely worse off than they were under the Sikh Government. Then, again, there were large classes of cultivators, between whom and the proprietors it was difficult to draw any broad practical distinction: the position and rights of the one seemed to merge very much into those of the other; for the cultivator paid no rent in our sense of the word, but only the share of the revenue demand of Government which fell upon his holding; his privileges and profits being in this respect very much, the same as those of the proprietors. Now this class had special claims on our consideration.

Such being the vague and undefined position of the interests and rights in the soil, our first settlement went far to fix and to create a title in the land. Its effect was to substitute for a vague and uncertain position a definite and legal right. The action of the administration and of the Courts of law during the last fifteen or twenty years had been also to strengthen the system of rights so recognized, and to create a just expectation of their permanence.

Such being the case, he fully approved the principle of this Bill, which took that settlement as the basis of rights in the Panjáb, but at the same time afforded fair opportunity of remedying any patent injustice which might have been committed. He did not, as his Hon'ble friend the Lieutenant Governor, read the Bill as based on the assumption that the original settlement was founded on a great misconception, which it was the object of the Bill to remedy. On the contrary, he looked on the Bill as establishing and confirming all rights recognized by the settlement, but with the reserve of power to question the decisions of that settlement where shown to have been clearly opposed to any well-formed usage or right. The settlement might have been right, or it might have been wrong, in its general principles and assumptions; that was not the question. The question was whether it did not supervene upon a vague and uncertain state of things, and whether, so coming and having been so long enforced as the universal standard of landed titles, it did not supply a basis of right which should now be supported, excepting where in individual cases it might be shown to have done injustice.

With these general remarks, SIR WILLIAM MUIR would now beg permission to make some observations on certain provisions in the Bill. As Sir H. Durand had said, the details of the Bill would be the subject for future enquiry; but at the same time he felt that the observations made in this Council would go forth to those who would have to consider the details; and he felt it therefore incumbent on him to state his opinion on certain points, some of which were, it was true, points of detail, but still detail founded on important principle.

The first point he would call attention to was section 4, which provided for a right of occupancy in favour of ex-proprietors who had lost their proprietary right otherwise than by forfeiture to Government. He approved the general principle here laid down, but he was not sure of the exact bearing of the words "forfeiture to Government." Would it cover the case of purchase by Government for arrears of revenue? In other parts of the country, the right of occupancy was not extinguished by sale for arrears of revenue; but it was extinguished by the sale of the rights and interests of a proprietor in execution of a decree. Now, the term here used would permit of the maintenance of the occupancy-right where possession was continued after private sale or sale by the Courts. It was true that sale under decree was not a process at present in vogue in the Panjáb, but they must look to the time when the practice there would be assimilated with that in other parts of the country. He did not at all object to the principle of maintaining the occupancy-right after sale under

decree; for it might be fairly held that what was sold was simply the proprietary right, and in point of fact the ex-proprietor was generally allowed to continue as a cultivator. But there was something to be said on both sides; and as the principle would be to some extent different from what was followed elsewhere, it was a point which should receive careful consideration.

In the first part of the fifth section, which recognized the right of occupancy where recorded at the original settlement, after what he had submitted on the general principle of the Bill, he need not say he fully concurred, with the provisions for rebutment reserved to the proprietor. The second test of occupancy for twelve years antecedent to 1849, *viz.*, up to 1837, or more than thirty years ago, it would be almost beyond the power of any ryot, with the imperfect records existing under Sikh Rule, to prove, and he thought that this provision would be practically nugatory.

The grounds of rebutment seemed to him on the whole to be fair enough; but the adverse test in the third clause, namely, that tenants of the same class had been ordinarily ejected at will, might be difficult to reduce to a fixed and consistent rule. Of course isolated cases of ejectment, the mere occasional exercise of arbitrary power, if not in consonance with the sense of the people, would hardly constitute an adverse usage. He was not prepared to suggest anything more precise; but it was for consideration whether some definite rule could not be framed.

In the "Explanation," it was provided that voluntary exchange of land should not vitiate the ryot's title. It might be questioned whether the word "voluntary" did not bring an unnecessary element into the question. The fact of lands having been given in exchange formed in itself a *primâ facie* presumption that the exchange was made in satisfaction of some title or right, whether they were voluntarily accepted or not.

To the principle involved in section 6, after what he (SIR WILLIAM MUIR) had said on the Bill generally, he need not add that he did not share in the objection raised by the Lieutenant Governor of Bengal. If a cultivator could prove that at the original settlement he ought to have been recorded as having a right of occupancy, but for any reason was not so recorded, it was fair in theory that he should now be allowed to assert his position, subject to rebutment on the grounds indicated in section 5. But he agreed with the Lieutenant Governor that the section was not very clearly expressed. His chief objection to the provision was that it would be practically inoperative. It would be almost impossible now to go back to the old state of things existing at the original

settlement, and say what would have been the decision then. If it could be done, of course it was right that the record should be so amended. But practically he did not think that they could arrive at any satisfactory result by the attempt.

He now came to the part of the Bill connected with enhancement of rent. The first case, that relating to ordinary occupancy ryots, provided that the rent should not be raised above eighty-five per cent. of the net produce. It did not say that in any cases the enhancement should be less, and he concluded therefore that the rents of all such ryots could be raised to within fifteen per cent. of such full standard. He did not object to this: it was to the standard itself of "net produce" that he took exception. But much of his objection had been anticipated by the Mover of the Bill having in his speech used the term "rack-rent" as synonymous. Now he (SIR WILLIAM MUIR) took the word "net produce" to mean that portion of the gross produce which remained after deducting therefrom the wages of labour, profit of capital, and other such charges. But it appeared to him that, if this were allowed, it would be going on an entirely wrong estimate of the nature of rent, for rent was a thing which adjusted itself on a great variety of considerations between the owner and the occupant. The only safe and just standard was therefore the rent actually paid by occupants at will for similar lands in the neighbourhood, with any percentage of reduction that might be thought right in recognition of the privileged nature of the tenure.

The second case provided that, for those occupants who had hitherto paid no more than their share of the revenue demand of Government, the rent should not exceed seventy-five per cent. of the net produce; and, with the same reservation, he approved the principle. These might be looked on as having a sort of quasi-proprietary claim, and it seemed fair that they should be allowed to continue in the enjoyment of a larger share of the profits than ordinary occupancy ryots; the arrangement being in fact that, of the standard rack-rent, the privileged occupant should have twenty-five per cent., and the proprietor twenty-five per cent., the remainder going to Government. But if this were enacted, care should be taken that the benefit was not conferred on those who had no proper title to it; and he was afraid that, as the provision now ran, it might include others. It was not sufficient that, before the institution of suit, the occupant had not paid at a higher rate than the land-revenue, for that might have been merely as a matter of favour, and not of right or in pursuance of a recognized usage. He thought that the ryots entitled to the privilege should be more carefully defined so as not to go beyond the class of tenants fairly entitled to it. Re-

ferring now to section 9, it was proposed in the third clause to enact that no enhancement should take place within three years of a decree, unless, among other reasons, on account of improvements made at the sole expense of the land-owner. If the improvement were made at the sole cost of the cultivator, it was presumed that the entire enhancement of value would be enjoyed by him; and this was the principle followed elsewhere. But SIR WILLIAM MUIR was inclined to think that they had hitherto gone on a wrong principle in not recognizing the right of the proprietor to share in the enhanced value of his land, even if the improvements had not been effected at his cost. It was the improvable nature of the land which had rendered the work of improvement possible, and the proprietor had an interest on that improvable element as well as the ryot. Of course, if the improvement were effected solely at his cost, the entire enhancement of value should go to the proprietor, with such deduction as might seem adequate for increased labour, risk or responsibility on the cultivator's part. But it did not follow that the converse was equally true, and he should be glad to see the point farther considered. If the proprietor were allowed to participate in some degree in the fruit of improvements, however effected, it would impart to him an interest in permitting, and even stimulating, the ryots to make improvements, and in aiding in a variety of ways, such as allowing the use of tillage materials, which might not be reducible to a money estimate, but yet might be highly important to the ryot. Whereas, if he were held to have no share or interest whatever in improvements not effected by himself, it tended to make him obstructive, and throw hindrances on the ryot's path, which he could do in a thousand ways to the great detriment of the occupant.

The 13th section related to commutation of rents in kind. Rents in kind belonging to a backward state of society, it was quite right to provide that they should not be reverted to where money rents were already paid, without the consent both of the landlord and the tenant. He was not so certain of the equity of the first part of the section, which enacted that rent in kind should not be commuted into rent in money without the consent of the landlord. Looking to the great advantages of money rents under ordinary circumstances, it might have been worthy of consideration whether commutation into money might not have been enforced at the instance of either party, had the feeling against such a course not been so strong in the Panjáb as was represented by Mr. Brandreth. There were, moreover, particular localities where the crops were very uncertain, or where, as in jungle lands, they were exposed to ravages of wild beasts, or other causes of great fluctuation; and under these circumstances no doubt rents in kind where peculiarly suitable. Care should be taken

This limitation of twenty years appeared wrong to him in principle. A ryot might have sunk a costly well, expecting to have a permanent return for the investment of his capital. It appeared wrong in such a case to fix any limit of time. Cultivators should be compensated for all unexhausted improvements, for which they had not already received a full equivalent. It should be left to the Courts to determine on the merits of each case what was an unexhausted and uncompensated improvement, without arbitrarily laying down a period.

In the definition of improvements perhaps "fencing" and "enclosing" might with advantage be added.

SIR WILLIAM MUIR apologized for having detained the Council so long. But the Bill was one that closely affected the largest and most important class of an extensive Province in their dearest rights, and he felt bound, therefore, to give his opinion on the leading provisions of a measure which would have so great an influence upon their well-being.

The Hon'ble MR. TAYLOR said that His Hon'ble friends Sir H. Durand and Sir William Muir had anticipated much that he had to say in regard to the unusual and imperfect form in which this Bill had been introduced. As to the general principle of the Bill, so far as it recognised the existing status of occupancy rights, he entirely concurred with Sir William Muir, and he also agreed in many of his remarks on the several sections of the Bill. But it seemed to MR. TAYLOR that his Hon'ble friend Mr. Brandreth had disarmed any close criticism of details at this stage of his Bill, by the proposal to publish it for a period sufficient to admit of their receiving opinions, and a judgment on its merits, from the most experienced officers of the Panjáb before it went to Committee. When moving for leave to introduce the Bill, his Hon'ble friend stated that most of its provisions had either been approved or suggested by a Committee appointed to consider the question of tenant-right in the Panjáb; but beyond this statement there was nothing before them to show that his opinions were shared by the other authorities of the Province he represented, or that he did not in fact stand alone in the views he had expressed. He (MR. TAYLOR) had heard indeed from several quarters during a recent visit to the Panjáb, and His Excellency the President and his colleagues in the Executive Council would remember, in support of the fact, the voluminous proceedings on the subject which were under discussion a year and a half ago, that there were very material differences of opinion on this question of tenant-right among those who were most competent to judge; and he believed he was right when he said that those differences were by no means

reconciled in the Lahore Committee to which his Hon'ble friend had alluded, and of which he was President. It might no doubt be admitted, *primâ facie*, that what was good for the North-Western Provinces and for Oudh, might also be good for the Panjáb; but Mr. Brandreth had himself told them that the general circumstances of the Panjáb were very different, and to meet these differences, he had introduced into the present Bill provisions which were at variance in some material respects with those which had been made for the other Provinces. He had avoided, for instance, what was held to have been the mistake of Act X of 1859, giving rights of occupancy to tenants who had cultivated for a certain arbitrarily fixed period: but there were other points and other provisions of the Bill which, when the circumstances of the Panjáb were considered, might be equally open to objection. Without, however, entering into these details, the question which he should be inclined to ask was, whether the Panjáb Government itself, and the leading administrators of the Province, were satisfied that any such measure was required? Had it been carefully ascertained and established beyond a doubt that legislation in this direction was really wanted? Had Native opinion been appealed to in a matter upon which the people, through their representative men, were so eminently qualified to judge for themselves? And, again, he would ask, was this Bill simply declaratory of well-known existing rights, or did it, in any of its sections, create new rights which the people neither appreciated nor desired; or, on the other hand, destroy old rights which were valued and cherished by any section of the community? He must repeat what he had urged in somewhat similar terms elsewhere on a former occasion. He contended that the Government were right to legislate for the general good of the people even in matters affecting private rights; but such legislation ought, in his opinion, to be carefully directed to clear up whatever was doubtful in the existing law or definition of rights, to remedy needless restrictions upon real and substantial interests in land, in view to their development for the public good, and to commute and settle for ever all dormant and mischievous claims. But to create new kinds of tenures, and to confer new rights, irrespective of the existing state of things, without consulting the wishes of the people and satisfying themselves that action was really wanted, would be a measure of legislation both unsound in theory and dangerous as a precedent.

His Excellency THE COMMANDER-IN-CHIEF said that, with the present amount of information before the Council, it appeared to him extremely doubtful whether the measure should be allowed to go into Committee. Sir Henry Durand had stated that he would not pledge himself to any of the principles of the Bill, and considered the introduction of it merely a tentative measure;

Mr. Taylor had great doubts whether there should at present be any legislation at all; and although Sir William Muir appeared to be in favour of legislating, still he seemed to be actuated by some of the considerations brought forward by Mr. Taylor, and to think that the Council had not before them sufficient information, and that the Bill should have been introduced with the authority of the Local Government. Without attempting to give any opinion on the Bill, or the various principles it embodied, it seemed to His Excellency that they were not as yet in a position to take up the Bill, or consider it so that the results of their deliberation would be of any use in guiding the Committee to which it was proposed to be referred. As he understood the constitution and practice of the Council, if the Bill were so referred, the Committee would hold that the principle—or rather principles, for there were many—of the Bill had received a general sanction from the Council; but if they referred the Bill to a Select Committee with the intention of afterwards throwing it out, or of altering it altogether in principle, it seemed to His Excellency that such a course was not suited to the dignity of the Council. He would therefore wish that the consideration of the Bill should be deferred till they were favoured with the reports which had been promised by Mr. Brandreth, and then they would be better able to judge of the propriety of proceeding with it according to form.

The Hon'ble Mr. Cockerell said he shared fully the general impression set forth in the speeches of the Hon'ble Members who had addressed the Council, as to the insufficiency of the information upon which they were called upon to assent to the principle of a Bill which had for its object the introduction of most important changes in the relations of landlord and tenant in the Panjáb, and he concurred in the conclusion expressed by the last speaker (His Excellency the Commander-in-Chief) as to the doubtful expediency of assenting to a Bill, the principles of which they were not in a position to affirm, being referred to a Select Committee.

The proposed measure would seem to have been brought before the Council with unnecessary precipitancy. It was well known that some of the most important provisions of the Bill had for some time past been the subject of much discussion in the Panjáb, yet not a single paper had, up to the present time, been laid before the Council, to show how far the conclusions upon which the Bill was founded were in accord with the views of those officers whose local experience entitled their opinion on the very difficult question of the relative rights of landlord and tenant to the greatest weight, nor in what way and to what extent the existing relations between those classes in the Panjáb called for the remedy of special legislation.

The provisions of this Bill which, in the absence of further information on the subject appeared to be most open to objection, were contained in Part II.

They purported to create a presumption of the existence of rights of occupancy in favour of a tenant who, having been himself the proprietor of the land occupied by him, had lost his proprietary interest in, but retained his occupancy of, the land continuously, or of a tenant whose right of occupancy had been recorded in the papers of a regular settlement sanctioned by Government previous to the passing of this Bill into law.

In support of these provisions, reference had been made to the somewhat analogous conditions of Act X of 1859, and the Oudh Rent Bill, which had not yet become law, in regard to rights of occupancy.

There was perhaps no provision in the Act referred to, the equitable character or expediency of which had been so much questioned, as the clause which denied the title of the landlord to re-enter upon land which he had suffered to remain in the unconditional occupancy of the tenant beyond the arbitrarily prescribed period of twelve years. Moreover, this provision of the Act was framed for application to that part of the Indian empire which had long been under our rule, and in which a more clearly defined and long established usage gave some sort of sanction to the principle which it involved; whilst, in the case of the Oudh Rent Bill, the creation or affirmation of the existence of rights of occupancy on the part of the tenant was based on the assent of the landlord; and although he ventured to doubt the equity of the recognition of the right of proprietors to fetter the interests of their posterity in this manner, in a country where the law which governed ordinary dealings with immoveable property jealously guarded the rights of the natural heir, by the restrictions which it imposed on the power of the owner for the time, in the exercise of his rights of ownership in dealing with such property; yet in that case there was a semblance of authority for the action which had been taken, such as appeared to be wholly wanting in the present case. On what considerations could it be reasonably declared that the mere fact of a quondam proprietary interest on the part of the occupier, no matter how it was originally acquired or how (save in the exceptional cases specified in the Bill) it had lapsed, enhanced the value of his subsequent tenancy interest? What security was there for the equitable declaration of the validity of a title to occupancy—and he apprehended that this proposed rule was likely to govern the vast majority of cases—resting merely upon the record of a right of occupancy in a regular settlement approved by Government? Sir W. Muir considered, for the reasons stated in his speech, if he rightly understood him, that such record did afford a trustworthy

ground for the affirmation of the tenant's right; but the Hon'ble Mover of this Bill admitted that the former settlement records were in this respect of more than doubtful validity, and although he added that the revised settlements then progressing were bringing to light and rectifying the errors of the past, he would remind the Council that the Bill as it now stood by implication excluded the records of settlements not completed and sanctioned by Government ere it became law.

As against the conclusions of the Hon'ble Member above referred to (Sir W. Muir) in regard to the value of the setttlement papers as the basis of rights of occupancy, he might quote the statements of an officer to whom reference had been frequently made by the Hon'ble Mover of this Bill in his introductory speech, and whose assertions and opinion in a matter of this kind, from his long practical experience of settlements in the Panjáb (he alluded to Mr. Prinsep) seemed to be entitled to the utmost consideration. With the permission of the President he would read portions of a letter addressed by this gentleman to a late Hon'ble Member of this Council upon the subject of this Bill. In regard to the provisions to which his remarks had been particularly directed, Mr. Prinsep wrote—"It comes out that there were no such proceedings as established the existing status in the record. The village accountants, when they drew up the records, filled in *merely on the period of occupancy test.* There was no enquiry, no confronting, no declaration made by the settlement officer" * * * "In Guzarat alone and north of the Chenab was there such a real enquiry" * * * "In five other districts there were no such papers showing a formal enquiry. The entries were made merely by the Patwárís" * * * As to the affirmation of these rights by decisions of the Courts, Mr. Prinsep said—"What are these decisions? 300 or 400 contested suits at most in each last settlement. Look into them, and you will find the same ruling principle, that the Courts looked to twelve years and twenty years, and nothing else, for no other reason gave the privileged status. This is a fact, and it is totally contrary to all that agrees with *our* notions of *equity, common sense, and village customs.*"

Here then was the deliberate conviction of one of the most experienced officers engaged in the administration of the territory to which this Bill applied, that the leading principle upon which it proposed to declare a right of occupancy to be vested in the tenant was unsound and inequitable. It was stated moreover—and in the absence of the publication of any papers to prove the contrary, they were justified in accepting the statement—that this conviction was shared by several of the leading officers of the Panjáb. Such being the case, he submitted that it was incumbent on this Council to pause and

await some further information on this subject ere it committed itself to the approval of the principle of those provisions of the Bill which related to the tenant's rights of occupancy by referring the Bill in its present shape to a Select Committee. For, so far as they had the means of coming to any conclusion in regard to the main condition of the declaration of a right of occupany being vested in in the tenant, that status rested solely upon the test of the arbitrarily fixed period laid down in the provisions of Act X of 1859, and derived no support from the results of any careful and detailed examination of the pre-existing relations between landlord and tenant in respect of the matter in the Panjáb, by which the question of the equity of this test could be satisfactorily determined. Entertaining these objections in regard to the principle of the fundamental provisions of the Bill, it seemed unnecessary for him to comment on its details. He would only remark that the provision in section 26, by which, in certain circumstances, a right of re-entry was conceded to the landlord upon land occupied by his tenant, under conditions by which an absolute right of occupancy adverse to his landlord was declared to be vested in him, involved an apparent inconsistency of principle which was of doubtful expediency; and that the matter of section 27 seemed also to be objectionable. If a tenure in which the tenant's permanent interest was limited to a right of occupancy at an equitable rate of rent was, under the prevailing local usage, either not transferable by sale or otherwise, or transferable only with the expressed consent of the landlord, then he (MR. COCKERELL) would observe that no valid reasons had been assigned for the proposed reversal of such usage.

For the reasons which he had stated above, if the Hon'ble Mover pressed his Motion to a division, he should feel obliged to vote against the Bill going into Committee in its present shape.

The Hon'ble MR. STEUART GLADSTONE had not intended to say anything on the subject of the Bill before the Council, because he must admit that it was a subject of which he was very ignorant. He thought, however, that it was a good rule not to disturb any arrangement that had worked well, unless dissatisfaction was clearly expressed regarding it, by persons able to speak with authority, or something was otherwise shown to necessitate legislation on the point. He agreed with His Excellency the Commander-in-Chief that, at the present stage of the measure, no such cause appeared to have been shown, and that the consideration of the measure should therefore be postponed till the receipt of the reports that had been alluded to by the Hon'ble Member in charge of the Bill.

The Hon'ble MR. SHAW STEWART said that when they considered the great interest that now attached to the question of tenant-rights and property in land in Ireland, in India, and throughout many portions of Her Majesty's

dominions, it would have been surprising if a measure like the Bill before them could have been introduced into any assemblage of Englishmen entrusted with legislative functions without obtaining the attention and consideration evinced by this debate. Though, like the Hon'ble gentleman who spoke last, he had come unprepared to discuss the Bill on this occasion, yet several points had been stated in debate to which he would like to refer in a few words. His Hon'ble friend, Sir William Muir, appeared to have understood the Bill to be founded on the principle of upholding the settlements made in the Panjáb fifteen or twenty years ago. Now he must confess that he had formed a different idea of the Bill, and one which agreed with that of His Honour the Lieutenant Governor. He thought all they had heard from the Hon'ble Mover showed that this Bill proceeded on the assumption that the settlements were made on erroneous principles, and was intended to offer to persons affected by those settlements an opportunity of upsetting them of which they had hitherto been deprived. Looking at the Bill in this light, he would observe that, from several years' experience in the province of Sind, whose revenue institutions and usages were not dissimilar to the Panjáb, he was able to confirm much of what his Hon'ble friend the Mover said as to the difficulty of dealing with this question. In Sind they had many classes of tenants—some absolutely tenants-at-will, some with occupancy-rights but liable to enhancement of their rent, some with occupancy-rights and free from liability to enhancement, in fact nearly proprietors, and some with no defined rights at all. He could also confirm his Hon'ble friend's opinion as to the necessity of recording these rights at the time of settlement, and that no settlement could be really efficient or popular where this record was not made. But at the same time he must say that he had grave doubts as to the propriety of altering by force of law these settlements, which had been in force for many years, by which, as his Hon'ble friend stated, the Courts had been guided, and by which the interests of an indefinite number of persons in the Panjáb would be seriously affected. As he regarded this to be the scope and effect of the Bill, he could not, in the absence of any expression of opinion on the part of those most interested—the landlords and tenants of the Panjáb—approve of this Bill going further at present. They had had opinions read to them which led him to doubt if the people of the Panjáb themselves required any legislation; and if the forms of this Council admitted of it, he would be glad to see the question before them postponed until the reports of the Lieutenant Governor of the Panjáb and the financial officers there were laid before them.

His Honour the Lieutenant Governor would, with His Excellency the President's permission, say a few words before Mr. Brandreth made

his reply. His Honour thought it very much to be regretted that the correspondence on the subject of the Bill, which had already been carried on in the Panjáb, had not been printed and communicated to the Council when the Bill itself was circulated. His Honour could not help thinking that, if that had been done, the Bill would have received the support of the Council, instead of, as was likely to happen, being altogether postponed. The two main objects of the Bill were to give landholders the opportunity of upsetting some of the rights of occupancy which were almost unanimously admitted in the Panjáb as having been established on too large a scale at the time of the first settlement. That, His Honour thought, might be said to be *the* object of the Bill; and then the opportunity was taken of defining the general rights of landlords, and of tenants having a right of occupancy. There was not the slightest doubt that some legislation on the subject was required. His Honour did not believe that any one with a sense of justice, who read the reports that Mr. Prinsep had submitted, would deny that some legislation was required to meet the cases mentioned in those reports. His Honour would therefore extremely regret that His Excellency the Commander-in-Chief's proposed motion should be carried. Every object would be gained if Mr. Brandreth would alter his Motion and refer the Bill to Committee for two months instead of six weeks, and if the Government would publish the correspondence which had lately taken place in the Panjáb, and also lay before the Committee those further reports to which he had referred, and which were expected to be received. His Honour was the more induced to press for the whole correspondence being put before the Council, because some remarks had been made with regard to Mr. Prinsep, which were likely to prejudice the Council against that gentleman. It was said, for instance, apparently as a reproach, that Mr. Prinsep was biassed by a strong personal feeling. His Honour had had the opportunity of seeing some of Mr. Prinsep's reports, and was aware that he held strong opinions. He was strongly of opinion that great injustice was done at the time of the last settlement, and this being so, surely it was no reproach that he held a strong opinion that the injustice should be remedied. If there was any reproach attaching to a strong personal opinion of right and wrong, His Honour was quite sure that it would attach more to those who, in some parts of the country, advocated with indiscriminate zeal what they considered rights of tenants as against the rights of landlords. His Honour would urge the Council to allow the Bill to go into Committee, in order that some measure might be passed which would put at rest questions that were now the subject of constant dispute, and formed an element of disturbance in the Panjáb.

The Hon'ble SIR WILLIAM MUIR begged the President's permission to make an explanation. The last speaker had implied that he had attributed to Mr. Prinsep the holding of certain views in the way of "discredit and reproach;" that, in the Lieutenant Governor's opinion, being more properly attributable to the party who sought to force the opposite views throughout the country. He (SIR WILLIAM MUIR) emphatically disclaimed the most remote intention of anything "like discredit or reproach" being attached to Mr. Prinsep. He honoured that excellent officer, not only for holding by views which he honestly entertained, but for doing all in his power to give effect to those views. What he did say was, that this was a subject on which it was obvious that extreme opinions were held on both sides: it was no reproach to Mr. Prinsep that he did hold strongly his own views; nor did he (SIR WILLIAM MUIR), like the Lieutenant Governor, attribute discredit or reproach either to the one side or the other for endeavouring to give effect to those views. His argument simply was this, that opinions on the subject being liable to one-sidedness, it was the province of the Government, and was specially incumbent on it, to hold the balance, and having duly weighed all that was urged on either side, to come forward with a Bill as its own measure and on its own responsibility.

HIS HONOUR the LIEUTENANT GOVERNOR said that he never intended to say, nor did he suppose, that Sir W. Muir had said anything to reflect personally to the discredit of Mr. Prinsep. All HIS HONOUR meant to say was that the allusions that had been made tended to discredit the opinions of that gentleman.

The Hon'ble MR. BRANDRETH said that, before adverting to particular points in the Bill itself, about which several Hon'ble Members had spoken in this debate, he wished first to advert to the supposition of his Hon'ble friend Mr. Taylor, that the provisions of this Bill were in opposition to the proposals of the Committee which assembled recently at Lahore for the purpose of considering the different matters relating to tenant-right which required legislation. He did not know where his Hon'ble friend obtained his information on this subject, but what he stated when he moved for leave to introduce the Bill, that most of its provisions had been either approved or suggested by the Lahore Committee, was substantially correct. He had there a copy of the suggestions for a Draft Bill made by the Lahore Committee, and signed by the different members, which his Hon'ble friend could compare with the present Bill if he thought proper. His Hon'ble friend, Sir W. Muir, also had concluded that this Bill had been introduced without the Lieutenant Governor of the Panjáb having expressed any opinion on the subject. When MR. BRANDRETH stated that the Lieutenant Governor had not yet expressed his views upon the Bill, all he meant

to say was, that a copy of the Bill as then introduced had not been seen by the Lieutenant Governor; but he was justified in stating that the Lieutenant Governor was strongly in favour of legislation on these subjects, and he trusted it would be found that many of the provisions of this Bill were in accordance with his views. He had there a letter from the Secretary to the Government of the Panjáb, dated 8th November 1867, to his address, in which he was informed, with reference to a Draft Bill which was before the Lieutenant Governor at Murree, many of the provisions of which resembled those of the present Bill, that His Honour generally approved of the provisions of that Draft Bill, but reserved to himself the right of expressing his views on the subject more fully thereafter. The Bill as it at present stood was introduced entirely on his own responsibility, though in accordance, he thought, with the justifiable supposition that he was not introducing a Bill which would be disapproved of by the Lieutenant Governor; and he informed the Council that the only reason why he had not deferred the introduction of this Bill until it had been seen by the Lieutenant Governor was that, unless he had published it at once, it did not appear to him that sufficient time would be allowed before the conclusion of the session to obtain the opinions of some of the many experienced officers in the Panjáb, which he was so anxious to obtain. He considered that he had sufficient information from the papers in his possession, added to the knowledge he had himself acquired, during several years of employment in the Panjáb, of the landed tenures in that Province, to justify his bringing in this Bill. If he had made out a sufficient case for this Bill, and if nothing conclusive or definite against the principles on which the Bill was based had been brought forth in this debate, as it appeared it had not, then he trusted that the Council would allow the Bill to go into Committee. As regarded some of the points that had been more particularly adverted to, His Honour the Lieutenant Governor had correctly described the objects he had in view in framing the fifth section of the Bill; but as regarded the sixth section, which His Honour thought was opposed to the principles on which the former section was framed, he (MR. BRANDRETH) would explain that the names of tenants were sometimes omitted altogether from the settlement records, or else their status was erroneously described. When there were obvious and clearly demonstrable mistakes, it seemed to him necessary to provide, as had been done in this section, that tenants who were not recorded as having rights of occupancy should have the same rights as other tenants who were so recorded. His Honour also doubted the expediency of the twelfth section of the Bill allowing a remission of rent, if the produce of the land had been diminished by drought or hail or other calamity beyond the control of the tenant. If a tenant lost his whole crop by any such calamity, and were compelled to pay the whole of the rent fixed for the

land, he might be utterly ruined. The Government often recognized the necessity of remitting its own demand for revenue on the land-owner when the crops had been destroyed, and it seemed desirable to give the Courts the power of allowing a similar remission between land-owner and tenant whenever there was an urgent necessity for doing so.

The next speaker, his Hon'ble friend Sir W. Muir, objected to the wording of the third clause of section 5 of the Bill, and especially to the word "ordinarily" in that clause as leaving the matter too indefinite. If the wording only was in fault, it could easily be altered. The object of the clause was to provide that, where a tenant, from seeing other tenants in his neighbourhood like himself ejected from their holdings at the sole pleasure of the land-owner, had reason for knowing that he himself was also liable to ejectment, he should be considered a mere tenant-at-will. His Hon'ble friend also objected to the word "voluntarily", used in the explanation added to the abovementioned section, with reference to the exchange of land by a tenant. That word was designedly used to make it clear that the exchange was made with the consent of the tenant; otherwise, if made without his consent, it was certainly considered that the tenant would lose his right of occupancy by the exchange. His Hon'ble friend had also objected to the term "net produce" used in the 8th section of the Bill, which he apparently considered had a different meaning from the word "rack-rent," which MR. BRANDRETH had used when alluding to this section in his opening speech. He was surprised at his Hon'ble friend having any doubts about the meaning of the word "net produce," especially as he adopted the word from an edition of the "Directions to Officers in the North-Western Provinces," edited by his Hon'ble friend himself, where the word was defined as meaning the ryot or produce rent paid by labourers raising their wages from the soil. Rent, in fact, as used by political economists, meant the same thing as net produce; but he could not use the word rent in this section as identical in meaning with net produce, because, for the special purposes of this Bill, a different and more restricted meaning had been attached to the word "rent" in the interpretation-clause of the Bill. He trusted also that his Hon'ble friend was not quite correct in his use of the term rack-rent, when he spoke of it as the rent paid by tenants in places adjacent to the land of the tenant whose rent it was proposed to enhance. With regard to the remarks made by his Hon'ble friend upon clause 3 of section 9, when he said that by this Bill no benefit was allowed to the land-owner in the increased rent yielded from improvements made by the tenant, he admitted there was some weight due to his Hon'ble friend's remarks, and that they well deserved the attentive consideration of the Select Committee to which he

hoped this Bill might be referred; but it seemed to him on the whole that, if the option of making the improvements was first given to the land-owner, and he did not avail himself of it, it was not necessary to give him any share in the increased rent, obtained solely from the improvements effected by the tenant under such circumstances. Then, as to the period of twenty years which his Hon'ble friend objected to, as the rent payable by tenants having rights of occupancy was limited to a certain proportion only of the net produce, the remainder of which they were permitted to keep for themselves in satisfaction of their rights of occupancy, it was evident that they must necessarily derive great benefits from any improvements they might have made, after the expiration of twenty years from the date of the improvements being made, though no special provision to that effect, giving them greater benefit than they would thus necessarily obtain, had been made in the Bill or considered requisite by him. Sir William Muir remarked regarding the 25th, 27th and 28th sections of the Bill, that he would not object to them if they were in accordance with the well-recognized custom of the country; that was, however, just what they were not: if they had been, there would probably have been no necessity for giving them a place in this Bill. The reason for the 25th section was that, as a tenant could not alienate his land, it seemed reasonable to infer, as regarded a cultivator who had not the ownership of the land, that he had alienated it, if he had derived no benefit from it for three years, and that it should in that case lapse to the land-owner. As regarded the other two sections, the question for the Council to consider was, whether the disabilities there referred to were of an injurious and unreasonable character: if they were, then, whether they ought to be removed on payment by the tenant of compensation to the land-owner. His Hon'ble friend had noticed some other points, but perhaps the consideration of them might suitably be left to the Select Committee to which he trusted the Bill would now be referred.

The Hon'ble MR. TAYLOR would also ask His Excellency's permission to correct a misapprehension of the tenor of his previous remarks on the part of his Hon'ble friend Mr. Brandreth. He need scarcely assure the Hon'ble Member that nothing could be further from his wish than to give expression to an opinion that his Hon'ble friend was not in every respect qualified, by his long experience of the Province and by his ability, to deal satisfactorily with the question of tenant-right, and to carry a measure through the Council which would fully meet the requirements of the country. All that was desired was that, as considerable difference of opinion was known to prevail, the Council should be in possession of the views of other authorities, especially those of the Lieutenant Governor, and of the members of the recent Lahore Committee, whose opinions

as to the necessity of legislation in the form of the Bill as introduced were not, he (MR. TAYLOR) was led to believe, in complete accord with those of his Hon'ble friend.

HIS EXCELLENCY THE PRESIDENT said, he hoped Hon'ble Members would consent to the Bill being referred to a Select Committee. A strong argument in favour of that course was that, if the Bill was not referred to a Committee for consideration and report, much valuable time which had been occupied in the discussion of the Bill, and which could ill be spared, would be lost. There could not be the shadow of a doubt that not only the Lieutenant Governor of the Panjáb, but Mr. Prinsep himself, was in favour of legislation on the subject. So long as two years ago (it was about July or August 1866), Mr. Prinsep himself (who, HIS EXCELLENCY might say in passing, was an old friend of his, and whose ability and capacity HIS EXCELLENCY highly estimated) wrote to him (THE PRESIDENT) that he was going on at a great pace, inquiring into, scrutinizing, and even deciding, those questions of tenant-right, during the progress of the settlement which he was empowered to make in various parts of the Panjáb. He added that he was in almost a disagreeable position in consequence of there being no distinct law on the subject. HIS EXCELLENCY's reply to Mr. Prinsep was that he should consult the Lieutenant Governor of the Panjáb and take his orders. Mr. Prinsep did so, and wrote again to him (THE PRESIDENT), and said that, with the consent and approbation of the Lieutenant Governor, he would like to come up to Simla and go into the subject. Mr. Prinsep came accordingly, and HIS EXCELLENCY then looked through all the papers which Mr. Prinsep had brought with him, and came to the conclusion, not only that there had been errors committed to a certain extent in the settlement of the Panjáb, but also that they were bound in justice to allow a reconsideration of the subject. There were certain points, however, on which HIS EXCELLENCY differed with Mr. Prinsep. HIS EXCELLENCY thought that perhaps Mr. Prinsep went too far in favour of landholders, and did not sufficiently take into consideration the circumstances under which, practically, tenants in the Panjáb had, under the Sikh Rule, acquired rights and interests antagonistic to those of the land-owners: nevertheless in many points HIS EXCELLENCY agreed to what Mr. Prinsep desired. HIS EXCELLENCY then drew up a Note on the subject, which was circulated amongst the Members of the Government. Mr. Prinsep returned to the Panjáb with the understanding that the matter would be then sifted and considered, and a reference made to the Government of India in view to legislation on the subject. Since then nearly two years had elapsed and further enquiries had been made. A Committee had been appointed by the Lieutenant Governor to

consider the matter, and the result was that Mr. Brandreth was authorized by the Lieutenant Governor to take up the subject, and, with his entire consent, had come down to Calcutta and introduced the Bill. HIS EXCELLENCY thought that, under those circumstances, Hon'ble Members should not hesitate to allow the Bill to go into Committee, on the understanding, of course, that no final report was made on certain points until the Lieutenant Governor's detailed opinions on the Bill itself, and those of any other gentlemen in the Panjáb, official or non-official, who might like to make their reports, should be before the Committee. But there were many points on which there would be no difference of opinion; and these—some of them of considerable importance—might in the meantime be settled by the Committee. On such points the grounds of legislation would be clear, and only those points would be kept in reserve on which there might be reasonable and fair doubts. As to the question of tenant-right, everybody knew that, not only in the East, but in the West, there was the strongest difference of opinion. Some authorities were in favour of the landlord holding adversely to the tenant; to others the converse appeared to be equally clear. But HIS EXCELLENCY thought that what was really wanted was to have such a compromise as would secure the just and fair interests of both parties; that was, that the landlord should not be overborne, that he should have what was reasonable and fair, and that, on the other hand, the prescriptive advantages that tenants had in the Panjáb should be secured. That being done, a definite settlement would be arrived at and be enforced by legal enactment. Nothing could be worse for the interests of the landlord and the tenant—for all interests—than to leave such things in a state of doubt or conflict, which invariably gave rise to the greatest antagonism amongst the people. It was common to find on one side of the Panjáb, and even in different parts of the same district, that the landlords were powerful, and there they oppressed their tenants; and in other parts you found tenants powerful from various causes, and there they denied the just rights of landlords. All this was very bad. In his (THE PRESIDENT'S) mind, one of the great arguments in favour of the British Government of India was the way in which they had tried to put, not only the land-revenue of the country on a fair and stable footing—to reduce the demands of Government to a fair proportion of the produce of the soil—but simultaneously, or nearly so, to define all rights and interests in the land. HIS EXCELLENCY was one of those who had always thought that there was a real and true proprietary interest in the soil, though he believed there were many persons, from different parts of the country, who maintained that there was no such thing as a proprietary right in land. In many parts of India it was a received maxim that there was no such right. HIS EXCELLENCY admitted that, in many places where the Mahráthas and Pindáris overran the

country, the population was destroyed, landlords and their descendants were swept away, and there proof of proprietorship in the land had to a great extent: disappeared but even in those parts there were designations of tenures which showed that there must at one time have been an hereditary proprietorship in the soil. There was no doubt also in his (THE PRESIDENT'S) mind, that in many respects the tenures of the Panjáb and the North-Western Provinces were identical, and that where there was a considerable difference it had arisen from the action of different rulers during late years. In the Panjáb, where a real and true proprietary right existed, the value of that right had almost sunk to zero under the Sikh Rule: in parts of the country, many of the landed proprietors were almost in the same position as their tenants; for the Government took almost as much from the proprietor as the rent of his land, and where any rent was in reality retained by the landlord, it was in the proportion of one or two per cent. of the rent, three per cent. being considered a large proportion for him to receive. Under such circumstances, the landlord had little on which to found his right of proprietorship, and it was only his attachment to the soil that led him to wait and hope for better times, and maintain his assertion that the land belonged to him. But another circumstance must be considered: that the value of the land being so small, the landlord was only too glad to get cultivators to remain in his village, and in some cases the landlord bore a larger proportion of taxation than the cultivator himself, and was satisfied if the cultivator recognised the right of the landlord theoretically, and gave him some trifle, something at a marriage or festival. It would not be reasonable, after such a state of things had grown up, to turn round and say that, because the Government had reduced the land-tax and revived interests practically in abeyance, you should therefore sweep away the tenants' rights. HIS EXCELLENCY was convinced that a satisfactory compromise could be made. If our officers only held fairly the balance between the two parties, he had no doubt they would come to an agreement amongst themselves. The settlement officer would only have to act as mediator, and things would almost adjust themselves; but without that action on the part of our officers, things would remain in their old state of conflict. HIS EXCELLENCY did not want to dilate on these matters: he could say a good deal more on the subject; but having expressed those opinions, he did hope that the Council would allow the Bill to go into Committee, with the understanding that under no circumstances should the Committee report till they had all the information they required before them. While HIS EXCELLENCY would not desire to fix so long a period as two months—and he hoped all the information would be available within six weeks—it could be clearly understood that, until then, no report would be made.

There were one or two points in the Bill on which it might be well for him to say a few words. On the question raised by His Honour the Lieutenant Governor, as to section 6, HIS EXCELLENCY thought His Honour's remarks were just. It struck him (THE PRESIDENT) that the latter provisions of the section under notice were not well worded. What HIS EXCELLENCY presumed was intended was this, that inasmuch as you proposed by the fifth section to give the proprietor the right of asserting his claim, the converse was intended to be provided by the following section, *viz.*, that where the cultivator had not brought forward his claim during the settlement, you would give him an opportunity of proving any right that he possessed but had failed to assert at the time of the settlement. But as the sections now stood, it appeared that, as you told the tenant "under the old rules you would have been recorded as a tenant with a right of occupancy," and then told the landlord "I now give you the right to show that the tenant should be turned out again," there appeared to be an inconsistency in that. This, however, could be set to rights by some verbal alteration.

To another point raised by His Honour the Lieutenant Governor, the Hon'ble Mr. Brandreth had already replied, *viz.* the objection to give a reduction in certain cases of calamity. It struck him (THE PRESIDENT) that that provision—it was in Section 12—was not an unfair one; because, in the case of calamities of the kind contemplated by that section, it had always been the custom in those Provinces that were not permanently settled to give the landlord a remission of revenue. Now, if landlords came to the Government and asked for relief of this kind, they should deal in like manner with their tenants. When the land-owners of Orissa asked the Government to suspend the collection of their revenue-instalment, the Government agreed to do so, provided the landholders did the same with their tenants. That, HIS EXCELLENCY thought, was the kind of case intended. What probably led His Honour the Lieutenant Governor to allude to the matter was that, in Bengal, the assessment of revenue was very light, and reductions or suspensions of the Government demand were seldom allowed, but in Provinces such as that to which the Bill would apply, the assessment had always been high.

With regard to section 13, on the point of commutation. The section seemed to him (THE PRESIDENT) on the whole fair, but it might be made still more so by the option being left to the tenant on exactly equal terms; that was to say, that rent in money should not be turned into rent in kind, nor rent in kind turned into rent in money, without the consent of the tenant. As the section stood, no commutation of rent in kind into rent in money would

take place without the consent of the land-owner; but no commutation of rent in money into rent in kind could be made without the consent of both the land-owner and the tenant. The remarks which Sir William Muir had made on this subject seemed to be fair. In parts of the country, it was of advantage to proprietors to receive payment of rent in kind, but there were other parts where it was to the advantage of the tenant to pay in kind. Where the people, landlords and tenants, were of the same race, they generally came to an understanding. There were, however, some localities where there was a strong antagonism between landlord and tenant from some cause, and in those cases constant disagreements went on, and great injury to the common interest arose, from the circumstance of rents being paid in kind. It was almost impossible to adjust those differences, and it was to the common interest to have the rent made payable in money.

There was one point raised by Mr. Cockerell to which Mr. Brandreth had not adverted in his reply. It appeared to His Excellency that there was no provision in the Bill whereby the right of occupancy was given by the lapse of a certain number of years: on the contrary, section 7 provided that no tenant-at-will should be deemed to acquire a right of occupancy by mere lapse of time.

His Excellency the Commander-in-Chief had listened to His Excellency the President's remarks with the greatest respect and deference, but as several Hon'ble Members had testified their wish to support his (the Commander-in-Chief's) views with regard to its being expedient to defer the further consideration of the Bill till the receipt of the expected reports, it seemed necessary to take the sense of the Council. He had no wish to offer opposition to the measure at this stage as regarded its ultimate progress. His Excellency would therefore ask leave to move as an amendment—

That, in the present motion, for the words "that it be referred to a Select Committee with instructions to report in six weeks," the following words be substituted—"that the consideration of the Bill be postponed till further reports are received from the Panjáb."

His Excellency did not desire to refer to the former debate, which would be irregular, but he would take the opportunity of saying that, whilst the debate had been proceeding, he had had an opportunity of referring to the opinions written by the members of the Executive Government about a year and a half ago. While abstaining from quoting the opinions of the other members of the Government, His Excellency might say that, on the very voluminious papers then referred to him, he had not formed an opinion favourable

to legislation on the matter. Seeing that His Excellency had not received any further information, and that no further opportunity of considering the subject had been afforded to him, he was as yet bound by the opinion he then expressed. Wherefore His Excellency hoped that that would be taken as an excuse for his wishing to be further instructed by the reports of the Lieutenant Governor of the Panjáb and other authorities qualified to give an opinion on the subject, so that His Excellency might, through the debate that would take place on those reports, be in a better position than he was now in, to reconsider the opinion he had formed on this subject. Such a debate would certainly be of great use to the Select Committee, which would then have some guidance as to the real views of the Council. His Excellency would repeat that he was confirmed in the position he had taken by the opinion of those Members who had sided with him, and that this motion was not intended as one of opposition to the measure.

The Hon'ble Mr. Shaw Stewart said that, with every deference to His Excellency the President's views, he would suggest to his Hon'ble friend the Mover that, instead of dividing the Council, he should adjourn his Motion to refer the Bill to a Select Committee.

The Hon'ble Mr. Brandreth said, from what had fallen from Hon'ble Members, it seemed to be expected that there would be some further reports. He wished, however, to guard himself from any misunderstanding, and to point out that what the Lieutenant Governor of the Panjáb had said was that he would defer making any remarks on the subject until the Bill had been introduced.

His Excellency the President said that the Lieutenant Governor of the Panjáb had written to him that he desired legislation on the subject, and asked how the Bill was to be published if it were not introduced into Council.

The Hon'ble Major General Sir H. M. Durand said, that His Excellency the Commander-in-Chief's amendment seemed to him somewhat misapprehended. It raised no objection to Mr. Brandreth's Motion "to introduce the Bill to define and amend the law relating to the tenancy of land in the Panjáb." It merely would supersede the latter clause, which referred the Bill to a Select Committee with instructions to report in six weeks, or two months as altered by the President. The amendment offerred no difficulty, therefore, to the introduction and publication of the Bill; it only affected, temporarily, the proposed immediate reference of the Bill to a Select Committee.

His Excellency the Commander-in-Chief signified his assent to this view of his amendment.

The Right Hon'ble MR. MASSEY said, if HIS Excellency the Commander-in-Chief would agree to withdraw his amendment, he would propose that the debate be adjourned for a month.

HIS EXCELLENCY the PRESIDENT thought the result of such an adjournment would be to prevent legislation on the subject during the present session.

The Right Hon'ble MR. MASSEY continued—With due deference to HIS EXCELLENCY the PRESIDENT, he did not think that that would be the inevitable consequence of the postponement of the discussion. With the information they should receive, the labours of the Committee would be greatly facilitated, and a satisfactory decision on the subject would be materially promoted. On the other hand, if this Bill went into Committee now, without the information that was desired, MR. MASSEY did not see at what conclusion the Committee could arrive.

HIS HONOUR the LIEUTENANT GOVERNOR believed there were already voluminous papers which might be put before the Select Committee. If, however, the debate were postponed for one month, the chances were strong that there would be no legislation at all on the subject during the present session. His own opinion was that legislation was urgently required, and that the expected reports could easily be laid before the Committee, if the time for the consideration of the Bill were extended to two months.

His Excellency THE PRESIDENT said that enquiries were then going on in half the districts of the Panjáb, and there was no legal authority for such enquiries and for the decision of the points that were constantly arising.

His Excellency THE COMMANDER-IN-CHIEF'S amendment was then put.

The Hon'ble SIR WILLIAM MUIR wished to state the reasons which should induce him to vote against this Motion. From the explanation furnished by his Hon'ble friend the Mover of the Bill, he was now satisfied that the measure had in a general way the approval and concurrence of Sir Donald McLeod. And that, taken in connection with the full and elaborate discussion which had been referred to by his Hon'ble friend the Lieutenant Governor of Bengal, and which he (SIR WILLIAM MUIR) had had the opportunity of carefully perusing on a former occasion, persuaded him that there did exist ground for referring the Bill to a Select Committee. Ample opportunity would still be given to opinions from the Government and others in the Panjáb, on the Bill being published. He deprecated the delay which would ensue if an opposite course were followed, as settlement operations were being pushed forward in the Panjáb, and therefore the question pressed for early solution, and it was of the deepest importance that the uncertainty at present prevailing should be set at rest.

The Council then divided—

AYES.	NOES.
His Excellency the Commander-in-Chief.	The President.
Hon'ble Mr. Taylor.	His Honour the Lieutenant Governor.
Right Hon'ble Mr. Massey.	Hon'ble Sir W. Muir.
Hon'ble Major General Sir H. Durand.	„ Mr. Brandreth.
„ Mr. Shaw Stewart.	
„ Mr. Skinner.	
„ Mr. Steuart Gladstone.	
„ Khwája 'Abd-ul-ghani.	
„ Mr. Cockerell.	

So the amendment was carried.

COTTON FRAUDS' BILL.

The Hon'ble MR. SHAW STEWART presented the report of the Select Committee on the Bill for the suppression of Frauds in the Cotton Trade, and moved that the Report and the Bill as amended in Committee be published in the *Gazette of India.*

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the motion which stood next on the List of Business, for leave to introduce a Bill to amend and consolidate the Law of Procedure in the Courts of Criminal Judicature not established by Royal Charter.

Leave was granted.

The Right Hon'ble MR. MASSEY moved that the Hon'ble Mr. Cockerell be added to the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes.

The Motion was put and agreed to.

The Council adjourned till the 24th January 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA,
The 17th January 1868.

Office Supdt. Govt. Printing No. 440 L. C.—23-1-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 24th January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.

The Hon'ble MR. MINCHIN took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

PEPPER DUTY (COCHIN) BILL.

The Right Hon'ble MR. MASSEY moved that the report of the Select Committee on the Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Cochin) be taken into consideration. The Committee had merely made one or two verbal alterations.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL SUITS (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant

Commissioner for the trial of civil suits, and moved that it be referred to a Select Committee with instructions to report in a fortnight. The little there was to be said about this Bill he had said when he moved for leave to introduce it. Certain Courts had been established in the Panjáb for trial of civil suits, besides those recognized in the Panjáb Courts' Act (No. XIX of 1865), and, in consequence of no mention having been made of those Courts in the Panjáb Courts' Act, doubts had been entertained of their legality. The object of this Bill was to remove those doubts, and to enable the Local Government to invest any person with limited powers to try civil suits, in the same way as it could by the Criminal Procedure Code invest any person with the powers of a Magistrate. The Secretary to the Government of the Panjáb had suggested an alteration in the concluding part of the second section of the Bill; he proposed that it should be worded thus—"all decrees heretofore passed by any person invested by the said Local Government, otherwise than under Act XIX of 1865, with power to try and decide civil suits, shall be deemed as valid as if the said power had been conferred under this Act." The Secretary suggested the alteration on the ground that he was not sure that the former notification had always been in the form of investing with the powers of an Assistant Commissioner or Tahsíldár; he thought it had as often been investiture with power to try and decide civil suits up to certain amounts, and that the Bill, as printed, would not legalize decrees passed in accordance with the last mentioned powers. This appeared a good criticism. The Bill might appropriately be amended as proposed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble Mr. Shaw Stewart, in moving for leave to introduce a Bill to amend and consolidate the Law of Procedure in the Courts of Criminal Judicature not established by Royal Charter said, the reform of the Courts of Civil and Criminal Judicature was first brought before the consideration of the Legislative Council on the 27th of December 1856, by a Resolution of the Government of India which he would take the liberty of reading to the Council.

"The Right Hon'ble the Governor General in Council resolves that the First Report of the Law Commissioners, together with the Hon'ble Court's Despatches relating thereto, and the communications since received on the subject from the Lieutenant Governor of Bengal and the Judges of Her Majesty's Supreme Court, be forwarded to the Legislative Council, with a view to the consideration of the recommendations of the Law Commissioners in respect to the forms of civil and criminal procedure, and to the enactment of a law in general accordance therewith.

"His Lordship in Council also resolves, that the Code of Procedure framed by Messrs. Mills and Harington, and the papers therewith connected, and all other recommendations recently brought forward for the alteration of the present law of Civil and Criminal Procedure in Bengal, be also forwarded to the Legislative Council.

"His Lordship in Council is of opinion that financial considerations render it at present impossible to sacrifice the large amount of revenue derived from judicial stamps.

"The Hon'ble Mr. Peacock has consented to prepare and bring in a Bill for giving effect to the proposed Codes of Procedure, with the exception noticed in the preceding paragraph.

"The question of amalgamating the Sudder and Supreme Courts, and the formation of a High Court, will be separately considered and reported to the Hon'ble Court."

In accordance with that Resolution, the then Hon'ble Mr. Peacock brought into the Council four Bills for the Amendment of the Procedure in the Criminal Courts in the Presidencies of Bengal, Madras and Bombay, and in the North-Western Provinces. His reason for bringing in four separate Bills was to be found in the following remarks :—

"He had felt some doubts at one time whether it would not be better to make one Bill applicable to all the presidencies and to the North-Western Provinces; but as he found that there were various suggestions from the Local Governments which might possibly render it necessary that the Codes of the several presidencies should slightly differ from each other, he had thought it advisable to frame a separate Bill for each presidency and for the North-Western Provinces. If, after considering those communications, the Council should be of opinion, as probably they would be, that separate Bills were not necessary, and that the same Code of Procedure should be applicable to all the presidencies, the Council, after considering the Report of the Select Committee to whom the Bills might be referred, might make such alterations as would adapt one of the Bills to all the presidencies."

These Bills were accordingly referred to four Select Committees, who, after deliberating for two years, presented a joint report recommending that one Bill should be passed for the whole of India. This Bill was considered in Committee of the whole Council for several months, and the Bill, as settled by the Council, was republished for a year. It was then referred back to a Select Committee to consider the proposed alterations that had been suggested by various authorities during the time the Bill was under publication, and to adapt the Bill to the amendments which had been made during that time in the Indian Penal Code. The Bill finally became law on the 27th of September 1861. This *resumé* of the five years' course of the Bill which became the Code of Criminal Procedure would give a faint idea of the great care and attention bestowed on every sentence of the Code; the debates on the Bill occupied many hundred pages of the printed proceedings of the Council, and the papers printed during the discussions before the Select Committee and the Council

amounted to a very good load for a man. It was, therefore, with no slight diffidence that MR. SHAW STEWART undertook the task of amending an Act so carefully prepared, and he would briefly explain the reasons that rendered an amending Act necessary.

The Indian Penal Code and the Code of Criminal Procedure had been in operation since 1861, and during that time the weak points in both had been indicated. Many more exceptions had been taken to the Code of Criminal Procedure than to the Penal Code, probably because the Penal Code applied to human nature, and the Code of Criminal Procedure to official nature. Human nature was the same everywhere, whereas official nature differed in different parts of India, and it was impossible to expect that the procedure that might be worked well by the official machinery of one presidency should be worked with equal success by that of another. In some cases, discrepancies had been pointed out between different parts of the Code; in some cases its provisions were too stringent; and in some not defined with sufficient accuracy. Various provisions of the Code had, moreover, been interpreted in a manner not quite consistent with local requirements and what appeared to be the intention of the framers of the Code. In the schedule especially, some of the points in which amendment had been imperatively required had already been dealt with in the three amending Acts which had been passed since the introduction of the Code, which would be incorporated in the proposed Bill. The Executive Governments in different parts of India had been sending in returns of the points raised in connection with the Code by the several Courts and officers who had had to work it, and the papers so collected had already reached an enormous bulk. The consideration of the proposed amendments was first entrusted to the late Mr. Stewart Gordon, who was desired to examine them. That task was stopped by his lamented death, and the papers were then entrusted to him (MR. SHAW STEWART), and, as a preliminary measure, Mr. Maine had requested him, in conjunction with Mr. Hobhouse and Mr. Brandreth, to examine the papers, and report what amendments of the Code appeared necessary. They had had several meetings, but press of business prevented their completing the task before the end of the last session of the Council. MR. SHAW STEWART saw enough, however, to make it quite clear that amendments were required, and he had since received a communication from the Home Department, intimating that the time had come for an amendment of the Code. The course which he had followed with regard to the Bill he now proposed to introduce was this. He had gone through all the papers that had been recorded, and had selected all points of sufficient importance to require amendment. He had consulted the debates of the late Legislative Council, and had tried to

ascertain, in regard to each of those points, the intentions of the framers. He had consulted the rulings of the Government of India and of the different Local Governments on such points, and where it was a point for determination by Courts of law, he had carefully considered the interpretations recorded by them. There were also various verbal amendments required to meet changes that had taken place since the Code was passed, and he had endeavoured to include all those amendments in the amending Bill. If leave was given to introduce the Bill, he did not propose to go on with it at once: he would have the Bill published, and let the Select Committee carefully consider the suggestions that would be made by various authorities in different parts of the country. He thought it unnecessary to trouble the Council with any detail of the various points in which the Code was proposed to be amended. He was however prepared, if any Hon'ble Member required it, to mention the more important points that had been dealt with.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH moved that His Excellency the Commander-in-Chief and the Hon'ble Sir William Muir be added to the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-Western Provinces and for other purposes.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits—The Hon'ble Sir W. Muir, the Hon'ble Messrs. Shaw Stewart and Cockerell and the Mover.

The Council adjourned till the 31st January 1868.

CALCUTTA,
The 24th January 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

Office Supdt. Govt. Printing—No. 686 L. C.—28-1-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 31st January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Sheoráj Singh, C. S. I.

The Hon'ble RÁJÁ SHEORÁJ SINGH made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

COMMISSIONER'S POWERS' (SIND) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to enable the Government of Bombay to delegate to the Commissioner in Sind certain of the powers of a Local Government said that by Act XXXII of 1867 the Governor General in Council was empowered to delegate to the Chief Commissioners of Oudh, the Central Provinces and British Burmah, any of the powers of a Local Government. When the Bill which afterwards became that Act was under the consideration of the Government of India, the Government of Bombay represented that considerable inconvenience was felt by the Commissioner in Sind not having certain powers vested in Local Governments, and suggested that provision should be made in the Bill to meet that difficulty. The Government of India, however, thought that a separate Bill should be brought forward for the purpose, and MR. SHAW STEWART now accordingly moved for leave to introduce a Bill to enable the Government of Bombay to delegate to the Commissioner in Sind all or any of the powers conferred on the Government of Bombay by the Bombay Regulations or by the Acts of the Governor General in Council solely applicable to Bombay, or by any Act of the Government of Bombay, or by certain specified Acts of the

Government of India; and, in addition, to enable the Government of Bombay, with the consent of the Governor General in Council, to delegate to the Commissioner in Sind all or any of the powers vested in a Local Government by any other Act of the Government of India. The Bill would be short, and would be drawn up in accordance with the instructions already given by the Government of India.

The Motion was put and agreed to.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART also moved that the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency be re-constituted, and that the Right Hon'ble Mr. Massey and the Hon'ble Mr. Cockerell be added thereto. The Bill had been referred to a Select Committee last session, and, with the consent of the Council, the Select Committee had been relieved from the necessity of submitting a report during that session.

The Motion was put and agreed to.

REPEAL OF OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill for repealing certain enactments which have ceased to be in force or have become unnecessary, and moved that it be published in the *Gazette of India*.

The Motion was put and agreed to.

HIGH COURTS FEES' BILL.

The Hon'ble MR. COCKERELL asked leave to postpone the Motion which stood next on the List of Business for leave to introduce a Bill to provide for the collection, by means of stamps, of fees payable in the High Courts of Judicature and in the offices belonging thereto.

Leave was granted.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH moved that the Hon'ble Mr. Minchin be added to the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-Western Provinces and for other purposes.

The Motion was put and agreed to.

CIVIL SUITS' (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH presented the Report of the Select Committee on the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits.

The following Select Committee was named:—

On the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency—The Right Hon'ble Mr. Massey and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned till the 7th February 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 31st January 1868.

Office Supdt. Govt. Printing.—No. 856 L. C. 4 2 68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 7th February 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Sheoráj Singh, C. S. I.

CIVIL SUITS' (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH moved that the Report of the Select Committee on the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits, be taken into consideration. A slight alteration, which he had mentioned as having been suggested to him when he introduced the Bill, had been made in the third section by the Select Committee, and one or two verbal amendments had also been made.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the Bill as amended be passed.

The Motion was put and agreed to.

COMMISSIONER'S POWERS' (SIND) BILL.

The Hon'ble MR. SHAW STEWART introduced the Bill to enable the Government of Bombay to delegate to the Commissioner in Sind certain of the powers of a Local Government, and moved that it be referred to a Select Committee with instructions to report in a fortnight.

The Motion was put and agreed to.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART also presented the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

HIGH COURT FEES' BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to provide for the collection, by means of stamps, of fees payable in the High Court of Judicature at Fort William, said that in the late Supreme Court, the fees levied on proceedings in, and business coming before, that Court were originally appropriated by the officers employed in its several offices and departments, in payment of their services and their establishments; and this system remained in force till 1833, when an arrangement was made by which the Government undertook the payment of those officers and their establishments, and the fees which were collected as before by those officers were paid to Government.

On the amalgamation of the late Supreme and Sadr Courts, it became necessary to make some provision for continuing the practice of levying fees and stamp-duties, which had previously obtained in those Courts, and making such practice applicable to the new constitution of the amalgamated Courts under the Letters Patent.

By the fifteenth section of the Statute establishing the High Courts, it was provided that these Courts should have power to settle tables of fees to be collected therein, subject to the sanction of the Government; and it was proposed that fees should be levied in accordance with the practice of the late Supreme Court on all proceedings in, and business coming before, the High Court in the exercise of its ordinary original civil jurisdiction, and that, in regard to matters coming before the Court in the exercise of its new appellate jurisdiction, the system of levying stamp-duties in accordance with the scale laid down in the existing Stamp Act should, in conformity to the practice of the late Sadr Court, be adopted.

Doubts were entertained as to the practicability of carrying out this proposal without legislative authority. Act XX of 1862 was therefore passed, by which it was enacted that court fees and not stamp-duties should be paid in respect of proceedings in the High Court in the exercise of its original civil jurisdiction, and that stamp-duties in accordance with the scale prescribed by the then stamp law should be levied on instruments and writings filed, exhibited or recorded in, or furnished by, the Court in the exercise of its new appellate jurisdiction.

So much of that Act, at least, as related to the levy of court fees was professedly only a temporary enactment, to remain in force pending the consideration of the expediency of substituting stamp-duties for those fees, and of the propriety of establishing an uniform system of assessment of duty on litigation on both sides of the Court.

It had been felt, however, that, having regard to the totally different character of the proceedings in, and business coming before, the High Court in the exercise of its separate jurisdictions, an uniform system of assessment of duty on litigation would be inapplicable to the circumstances of the case and inexpedient on financial grounds.

At the same time it was felt that the levy of stamp-duties was more simple than the fee-system, was better calculated to secure the punctual realization of the dues of the State, whilst it obviated the necessity of keeping complicated accounts and of maintaining a check over the collecting officers by subjecting their accounts to audit. It was stated as a matter of fact that, under the present system, many attornies were constantly in arrear in the payment of these fees, and the difficulty of enforcing regular payments was found to be very great.

The substitution of stamps would secure the prepayment of the Court dues, and do away with the necessity for keeping up detailed accounts and checks upon the fee-collecting officers. The change had been of late years universally made in the English Courts, where the practice of levying fees was almost extinct.

The Bill was designed on the model of an English Statute passed in 1865 for a similar purpose, in regard to the superior Courts of law at Westminster. If leave was obtained for its introduction, the Bill would probably be made applicable to the High Courts of Judicature at Madras and Bombay, and, possibly, also extended so as to include the Small Cause Courts of the presidency towns.

The Motion was put and agreed to.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH moved that the Hon'ble Rájá Sheoráj Singh be added to the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces, and for other purposes.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable the Government of Bombay to delegate to the Commissioner in Sind certain of the powers of a Local Government—The Hon'ble Messrs. Maine and Cockerell and the Mover.

The Council adjourned till the 14th February 1868.

CALCUTTA,
The 7th February 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Supdt. Govt. Printing.—No. 1075 L. C.—12-2-68 —180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th February 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble J. Strachey.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Sheoráj Singh, C. S. I.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART moved that the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency be taken into consideration. When he introduced the Bill, he had explained the object with which it was framed. It was found that some villages belonging to independent Native Chiefs in the Bombay Presidency had by mistake been brought under the Regulations and Acts in force in that presidency. The Regulations had never actually been enforced in those villages, but it was, nevertheless, thought necessary to declare that they were not in force, and this Bill would make complete the jurisdiction that the Chiefs to whom the villages belonged had always exercised therein.

The schedule of villages originally sent up by the Bombay Government had since been amended by the addition of two villages thereto.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PANJÁB APPEALS' BILL.

The Hon'ble Mr. Brandreth asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to appeals in the Panjáb and its dependencies.

Leave was granted.

The Council adjourned till the 21st February 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Calcutta,
The 14*th February* 1868.

Office Supdt. Govt. Printing No 1311 L. C 17-2-68 —100

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 21st February 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble John Strachey.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Sheoráj Singh, C. S. I.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY moved that the Select Committee on the Bill to consolidate and amend the law relating to rent in Oudh be re-constituted.

The Motion was put and agreed to.

HIGH COURT FEES' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to provide for the collection, by means of stamps, of fees payable in the High Court of Judicature at Fort William, and moved that it be referred to a Select Committee with instructions to report in a month. He said, it would be seen that the Bill proposed no alteration in the existing rates of duties levied in the High Courts. The power of fixing those rates, as he had mentioned when asking leave to introduce the Bill, was vested by statute in Government; and the present Bill did not propose in any way to interfere with the exercise of that power. The Bill

simply effected the reversal of the prescribed usage which was legally affirmed by Act XX of 1862, and in effect, by the substitution of stamp-duties, it introduced the system of prepayment of Court dues in lieu of the credit system now in force. The third section of the Bill provided for the operation of the Act from such time as the Government should appoint. The object of that clause was to give sufficient time for making such arrangements as might be necessary to ensure a proper supply of stamps for the purposes of the Act. The seventh section was section 4 of Act XX of 1862 transferred to this Bill. The object of its provisions in the Act from which it was transferred was to exempt the sheriff and attornies and other officers of the Court—for the whole body of attornies were technically known as officers of the Court—from rendering an account to Government of the fees received by them, which rendering of account was compelled by section 3, and which section was now proposed to be repealed. In the present Bill, the object of the section was to save the fees allowed to the sheriff, and possibly to attornies generally, and to such officers of the Court as received fees in addition to fixed salaries. There were certain clerks and officers of Court who, for swearing people to evidence who were not able to attend, or taking depositions, were allowed certain fees for special services. The object of this provision was to save the officers who were entitled to those fees being deprived of them by the introduction of the stamp system. The last clause of the Bill provided for the extension of its provisions to the Small Cause Courts in the presidency towns.

The Hon'ble Mr. Shaw Stewart thought the object of the Bill was a very desirable one, but it seemed to him that there were one or two provisions in the Bill which would be better otherwise provided for than in the Bill itself. For instance, by the fifth section power given was to the Local Government to make certain rules, amongst other things, for the cancellation of stamps. He did not understand whether that would include rules as to the manner in which spoiled stamps might be returned and fresh ones obtained in lieu. Again, in the sixth section there was a provision empowering a Judge of the High Court to order documents improperly stamped to be properly stamped. For those two things, *viz.*, the returning of spoilt stamps, and declaring the proper stamp for any document, there were good and sufficient rules laid down in the general Stamp Act. He thought, therefore, that it would be very desirable that the present Bill should have a reference to the Stamp Law. He thought, also, that considering there was only one High Court in each presidency town, and that the distinction between the Supreme and Sadr Courts was done away with, it was proper that the Council should consider whether any difference in the manner in which the Stamp Law was to be

applied should exist. It would, he believed, be very advisable to consider both enactments together, but that could not be unless the revision of the Stamp Act was introduced at the same time as this Bill was under consideration. It would be in the recollection of the Council that, at the close of the last session, the Right Hon'ble Mr. Massey promised that the consideration of the revision of the Stamp Law would be taken up during the present session. It appeared to him (MR. SHAW STEWART) that the consideration of the Bill before the Council would come on very well in connection with the revision of the Stamp Law. He would therefore ask the Right Hon'ble gentleman to be so good as to inform the Council whether he had applied, or intended to apply, for the permission of His Excellency the Governor General to take into consideration the revision of the Stamp Law, and thus to fulfil the promise made to the Council.

The Hon'ble MR. MAINE asked His Excellency the President to read to the Council the first words of the nineteenth section of the Indian Councils' Act.

THE PRESIDENT having read the commencement of the section—

The Hon'ble MR. MAINE said, it seemed quite clear that, both under the Statute and under its 8th Rule, the Council could only discuss measures that were at the time before it. The Rules of the Council laid down the process to be followed if any information should be required on a measure under consideration. The Member requiring the information was to apply to His Excellency the President, and the President would determine whether the information could be given. But the measure to which the question of his Hon'ble friend was addressed was not under consideration, and therefore MR. MAINE submitted that the question could not be put.

HIS EXCELLENCY THE PRESIDENT thought that the point raised by the Hon'ble Mr. Shaw Stewart should not be brought under discussion: it was not relevant to the business before the Council. The present question was simply whether payment of fees by money should not in the case of the High Courts be converted into payment by stamps. Under these circumstances THE PRESIDENT thought that it would not be proper that any discussion on questions connected with the general Stamp Law should take place. If any information were desired, the Financial Member of Government would no doubt be happy to give it to Mr. Stewart after the adjournment of the Council, but the question proposed could not be discussed at present.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the law relating to rent in Oudh—His Honour the Lieutenant Governor, the Hon'ble Mr. Taylor, the Hon'ble Major General Sir H. M. Durand and Sir W. Muir, and the Hon'ble Messrs. Maine and Brandreth and the Mover.

On the Bill to provide for the collection, by means of stamps, of fees payable in the High Court of Judicature at Fort William—The Hon'ble Messrs. Maine, Shaw Stewart and Minchin and the Mover.

The Council adjourned till the 28th February 1868.

CALCUTTA,
The 21st February 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Supdt. Govt. Printing—No. 1569 L C.—26-2-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 28th February 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble J. Strachey.
The Hon'ble Steuart Gladstone.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.

RULES FOR THE CONDUCT OF BUSINESS.

HIS EXCELLENCY THE PRESIDENT in moving that No. 16 of the Rules for the Conduct of Business be altered by the substitution of the word "fourteen" for the word "seven," said that, in the Rules for the Conduct of Business at meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations, the 16th Rule ran as follows :—

"No Bill shall be introduced until seven days after a copy of the Bill and of the Statement of Objects and Reasons has been furnished to each Member."

After consultation with the members of the Administrative Council, HIS EXCELLENCY proposed that a change should be made in that Rule. They found that the time provided in the Rule was insufficient, as it gave so short an interval as seven days after the receipt of the Bill by the Members for the consideration of the reasons and arguments for bringing forward the Bill. It was thought that a more lengthened period was desirable. HIS EXCELLENCY therefore proposed that the word "fourteen" be substituted for the word "seven" in the Rule.

The Hon'ble MR. SHAW STEWART asked if the change was intended for the advantage of the Members of the Council or of the public.

THE PRESIDENT said that the object was to give more time for the consideration of the principle of the Bill before it was introduced.

The Hon'ble MR. SHAW STEWART thought that the time proposed would hardly be sufficient for the consideration of a measure either at Bombay or Madras.

THE PRESIDENT explained that the object of the alteration was not for the benefit of outsiders, but for the advantage of the Members of the Council. The public would have an opportunity of considering the Bill and submitting their representations at a future stage.

The Hon'ble MR. MAINE said that probably his Hon'ble friend had not observed that Bills were not as a rule published till they had been introduced; and that, consequently, it was a matter of indifference to Local Governments and the public what period elapsed between the circulation of the Bill and Statement of its Objects and Reasons, and its introduction into the Council.

The Motion was put and agreed to.

MILITARY COURTS OF REQUESTS' BILL.

The Hon'ble MR. MAINE in moving for leave to introduce a Bill to empower the Governor General of India in Council to suspend the operation of section 17 of Act XI of 1841 (for consolidating and amending the Regulations concerning Military Courts of Requests for Native officers and soldiers in the service of the East India Company) in such places as he shall by notification declare, said that the object of the Bill was to improve the administration of civil justice in military cantonments beyond the limits of British India. Previously to 1859, small demands against persons subject to the Mutiny Acts were exclusively cognizable in military cantonments by Military Courts of Requests; such Courts sitting under the authority of Act No. XI of 1841 as respected persons amenable to Indian military law, and under section 99 of the English Mutiny Act as regarded persons to whom that Act applied. In 1859, the legislature altered the system by investing the Cantonment Joint Magistrate with civil jurisdiction in all the cases which had been governed by Act No. XI of 1841, and the jurisdiction so given superseded that of Indian Military Courts of Requests. Subsequently, in 1864, the Cantonment Magistrates' Act (XXII of 1864) was passed by that Council. It provided for the establishment of Courts of Small Causes in military cantonments both within and without British India. MR. MAINE would

only say of the Courts which had come into existence under that Act, that they had had the greatest success, and had given the greatest satisfaction; and he could only regret that their jurisdiction was not exclusive. They superseded the civil jurisdiction of the Cantonment Joint Magistrate under the Act of 1859; but they did not supersede the jurisdiction derived from section 99 of the Mutiny Act, which this Council had no power to alter. MR. MAINE had reason to believe that the anomaly and inconvenience thence arising had attracted the notice of His Excellency the Commander-in-Chief, and that the Home Authorities would be moved to obtain a change in the Mutiny Act, so as to exclude the jurisdiction of Military Courts of Requests in all cantonments in which a Court of Small Causes had been established. It was necessary now to enquire what civil jurisdiction existed in cantonments in respect of demands beyond the amounts cognizable by the Courts of Requests and Courts of Small Causes. In British India, of course, the ordinary law and the jurisdiction of the ordinary Courts prevailed. But in cantonments beyond British India, the law was still given by section 17 of Act No. XI of 1841, to which MR. MAINE's proposed Bill would apply. That section was as follows:—

"And it is hereby enacted, that in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before such military courts as aforesaid, against persons so amenable as aforesaid, for any amount of demand; provided that such military courts beyond the frontier shall be composed of European officers, and provided, that if the amount of claim shall exceed two hundred rupees, an appeal shall lie to the Court of Sudder Adawlut of the nearest presidency, according to the rules in force with regard to appeals from subordinate civil Courts."

Now, without wishing to disparage Military Courts of Requests, which, in their time, had been of great practical use, MR. MAINE thought that few men, even military men, would deny that their jurisdiction was advantageously superseded by that of a Small Cause Court, even as regarded small demands. Much more were those Courts unfitted to try cases involving very large amounts; and this unfitness was particularly felt in some of those cantonments in Native States, which, under the shelter of British rule, had grown into great commercial cities, and in which claims to lákhs of rupees were occasionally litigated. It was true that the section referred to gave an appeal to the nearest Court of Sadr Adálat; but that Court might be a hundred, or indeed more than a thousand, miles away; and it was not easy to see how, under the existing Code of Civil Procedure, an appeal could be effectually prosecuted, when one of the parties to the suit and all the witnesses might not be British subjects, and when the process and orders of the Court had no effect in the place in which the original decision had been passed. MR. MAINE was informed that, in fact, owing to

the practical and technical difficulties attending the appeal, it was rarely, if ever, presented. In this unsatisfactory state of things, the representative of the Governor General in certain Native States had been able, with the consent of the Native Chief, to establish, for military cantonments, a system of civil justice analogous to that which existed in British India. A case in point was the great cantonment of Secunderabad, in the territories of His Highness the Nizám, where the Resident, with the Nizám's sanction, had been able to give authority, first to the Small Cause Court, next above to the Cantonment Magistrate, who was invested with the powers of a Civil Judge, and finally to the Resident, who constituted the Court of Appeal. Probably, under the circumstances, this was the best system which could possibly be obtained. But its complete legality had been doubted, because it conflicted with the provisions of section 17 of Act No. XI of 1841. It had been argued that the Resident, as a servant of Government, was made, by Act of Parliament, subject to the directions of the Indian legislature, and could not therefore evade or contravene those directions by aiding in the establishment of a system inconsistent with them. MR. MAINE could not deny that there was some force in the argument, and therefore he proposed to suspend the section referred to in all military cantonments in British India which the Governor General in Council should specify by notification—it being quite understood that no such notification would issue, unless, under the concurrent authority of the Government of India and the Native Chief, a mode of administering civil justice had been provided, corresponding with the ideas which prevailed and the system which was established in British India.

The Motion was put and agreed to.

COTTON FRAUDS' BILL.

The Hon'ble MR. SHAW STEWART moved that the amended Bill for the suppression of Frauds in the Cotton Trade be referred back to the Select Committee, and that the Hon'ble Sir W. Muir and the Hon'ble Mr. Strachey be added thereto. It would be in the recollection of the Council that the Bill for the suppression of Frauds in the Cotton Trade had been referred to a Select Committee of the Council, who had lately submitted their report with an amended Bill. That report and Bill were before the Council, but since, certain papers had been received which ought to be considered by the Committee. One of those papers was a letter from the firm of Messrs. Gladstone Wylie and Co., and the other was a telegram from the Governor of Bombay. MR. SHAW STEWART would not go into details regarding the contents of those papers; he thought they would be better considered by the

Committee. There was one point, however, which he had omitted to refer to when he had introduced the Bill, and the omission was pointed out at the time, namely, the reasons which made special legislation necessary regarding frauds in the cotton trade in India. The reason he had made that omission was that he had long been accustomed to the working of the provisions of the Act in Bombay, where it was looked on as a settled thing that some special legislation on the subject of frauds in the cotton trade was necessary. He was therefore reluctant, at that time, to take up the time of the Council with any remarks on that point. He begged, however, now, to say a few words in answer to the objections that had been advanced as to the necessity of legislation. The chief objections appeared to be three. One objection was that the common law of the country was ample to meet the case, and that special legislation was not, therefore, necessary. Another objection was that the cotton trade should be placed on the same footing as the other exports of the country, and that there was no reason for special legislation, unless—

HIS EXCELLENCY THE PRESIDENT said, the Hon'ble Member would excuse him for the interruption, but HIS EXCELLENCY thought the same remarks that he had made at the last meeting of the Council would apply to the observations which the Hon'ble Mr. Shaw Stewart was now making. The Hon'ble Member should not speak on a matter which, though a cognate one, was not the question before the Council. The only question now was whether certain gentlemen should be added to the Committee, with the view of certain papers which were laid before the Committee being considered. It would be for the Committee to make any report that they deemed fit.

The Hon'ble MR. SHAW STEWART said he would defer to the decision of the President; but with reference to the second part of his Motion, he wished to say that he had omitted to mention the name of the Hon'ble Mr. Maine, because he understood that the Hon'ble Member was, *ex officio*, a member of all Committees. There was no intention on his part to exclude the Hon'ble Mr. Maine from the Committee MR. SHAW STEWART wished also to state that he hoped that the two gentlemen who represented mercantile interests in the Council would sit on the Committee this time. In consequence of some feeling which he did not entirely understand, those gentlemen had not hereto-

fore attended the sittings of the Committee; he trusted, however, that they would sit in future and aid the Committee with their advice.

The Motion was put and agreed to.

The Council adjourned till the 6th March 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA,
The 28th February 1868.

Office Supdt. Govt. Printing.—No. 1879 L. C. 6-3-68.—100.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th March 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.

PANJÁB APPEALS' BILL.

The Hon'ble MR. BRANDRETH presented the report of the Select Committee on the Bill to amend the law relating to appeals in the Panjáb and its dependencies.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH also presented the report of the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces, and for other purposes.

COMMISSIONER'S POWERS' (SIND) BILL.

The Hon'ble MR. SHAW STEWART presented the report of the Select Committee on the Bill to enable the Government of Bombay to delegate to the Commissioner in Sind certain of the powers of a Local Government.

The Council adjourned till the 13th March 1868.

CALCUTTA,
The 6th March 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

Office Supdt. Govt. Printing.—No. 1866 L. C.—6-3-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 13th March 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

The Hon'ble MR. CROOKE and the Hon'ble SIR R. TEMPLE took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

COMMISSIONER'S POWERS' (SIND) BILL.

The Hon'ble MR. SHAW STEWART moved that the report of the Select Committee on the Bill to enable the Government of Bombay to delegate to the Commissioner in Sind certain of the powers of a Local Government be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART also moved that the Bill be passed.

The Motion was put and agreed to.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH moved that the report of the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces, and for other purposes, be taken into consideration. He said that the most serious and important step which the Select Committee took was to cut out of the Bill all the sections which related to borrowing on debentures. They took this step, if MR. BRANDRETH correctly understood what was urged at their meeting, for these reasons. They considered that the Government of India would be virtually responsible for any failure on the part of Municipal Committees to fulfil their engagements, and they thought, therefore, that the Government ought not to be committed to such a responsibility by the acts of any subordinate authority.

The Committee doubted, also, whether the Municipal Committees, without a direct guarantee from the Government of India, would be able to raise money at any moderate rate of interest, and finally, the Committee attached considerable weight to an opinion expressed by the Right Hon'ble Mr. Massey, who was a member of the Committee, that the Government of India would, in all probability, receive in a favourable manner any proposition that might be made to it for an advance of money, to be repaid with moderate interest, for any important local improvement. As his Right Hon'ble friend was not there to confirm the opinion which he understood him to have expressed, he (MR. BRANDRETH) wished to recommend the proposal on his own account to the consideration of the Governor General in Council. He mentioned this proposal also because he thought that all the explanation that could be given was due to the Council, and also to the Lieutenant Governor of the North-Western Provinces, of the grounds on which the Select Committee had omitted altogether from the amended Bill the promise that had been made for raising money for works of public utility, to which the Lieutenant Governor apparently attached so much importance. Large sums of money, as the Council were doubtless well aware, were spent every year on public works out of the general revenues, for which the Government derived no direct return whatever, and from some of which works it might possibly be thought that the indirect advantage had been hardly worth the cost. Now, an important local improvement in a large town could hardly be without its advantage to the public in general; and if the Government, by lending money for such an improvement, was able, not only to confer a benefit on the public at large, but also to secure the repayment of any advances made, with interest, he could not but think that any proposal for borrowing money from the Government under such circumstances would be favourably received. With reference to the question whether this Bill should be made applicable

to military cantonments, which was touched on by several Members during the debate which ensued on the introduction of the Bill, it would be seen that the Committee had provided, in the fourth section, that no cantonment should be deemed a town for the purposes of the Act without the previous sanction of the Governor General in Council. The Council was informed during that debate (MR. BRANDRETH thought it was by His Excellency the Commander-in-Chief), that under the orders of the Governor General, a circular had recently been directed to the different Local Governments, enquiring their opinions in regard to military cantonments being made subject to municipal taxation. If the original draft of the Bill had been left unaltered, though no special allusion was made to military cantonments, it was possible that the Lieutenant Governor might have considered himself legally empowered to subject cantonments to municipal taxation: on the other hand, it would not have done to exempt cantonments unconditionally and absolutely from such taxation; because it appeared that the octroi had already been introduced into three cantonments in the North-West Provinces, and it was evident that the octroi system could not be carried out in any satisfactory manner, if those cantonments which immediately adjoined towns subject to octroi were exempted from the tax. The provision, therefore, made by the Committee appeared the best that could be made under the circumstances. When the replies of the Local Governments to the circular to which His Excellency the Commander-in-Chief referred had been received, the Governor General in Council would then be in a position to decide about the treatment of military cantonments.

Another provision of some importance, which had reference more especially to military cantonments in case they were subjected to octroi taxation, appeared in the eleventh section of the Bill, to which it was worth while alluding. It was here provided that the Lieutenant Governor should have power to exempt from the octroi any articles intended for consumption or use by any class of persons or animals. This provision was made in consequence of its having been brought to the notice of the Committee by His Excellency the Commander-in-Chief, that in one cantonment in Upper India, what appeared a most disproportionately large share of the octroi was paid by the Commissariat Department. There seemed no reason why Government should not pay its fair share of the municipal taxation, and the exempting of commissariat supplies from town duties might give rise to much inconvenience and even to fraud; but still, if for any reason town duties pressed unequally on any Government stores, it seemed right that the Government should have the power of exempting them. In another provision of the same section, which was introduced by the Select Committee, he did not entirely concur. The

Committee had restricted the taxation for municipal purposes to certain descriptions of taxes which were specified in the section, and no other taxes were to be levied without the consent of the Governor General in Council. They had omitted from this list an assessment of persons according to their circumstances and the property to be protected, which was apparently a sort of rough income tax, and was a tax which was, he believed, at present in force in many places. They had included in the list, and thus specially proposed to the Municipal Committees, a tax on carriage, a tax which, considering the great scarcity of carriage in a great part of Upper India, appeared to be of doubtful propriety. In the Panjáb, he knew the Government had lent considerable sums of money at different times for the construction of carts. The Committee, moreover, had prepared the list without having had before it, as it seemed to him, any sufficient information as to the kind of taxation which had been hitherto resorted to for municipal purposes, and in opposition, apparently, to the opinion of the Lieutenant Governor, who had recorded that it was his wish to leave Municipal Committees free to tax themselves in the way they might consider most appropriate. He was constrained, however, to submit to the decision of the Committee on this point. In all other respects he thought the details of the Bill had been greatly improved by the labours of the Committee; but as the amendments made by the Committee were described in the report which he laid on the table last week, he need not take up the time of the Council by referring in detail to every alteration which had been made.

As, however, some doubts were expressed when this Bill was introduced, as to whether there was any necessity for it, whether the existing Municipal Act was not sufficient, or whether any case had been made out for superseding it by a new enactment, it seemed advisable, before asking the Council to pass the Bill, that he should state more fully than was done in the Statement of Objects and Reasons in what respects the existing Municipal Act was considered to be defective, and for what reasons a new Act was required. An excellent memorandum by the Under Secretary to Government, North-Western Provinces, setting forth the general principles on which it was thought that legislation for municipal government should proceed, had been received since the Bill was introduced, and circulated for the information of the Council. This memorandum, he trusted, had had some effect in removing the doubts that were entertained as to the necessity for further legislation. It might be worth while also reminding the Council that a period of eighteen years had elapsed since the existing Municipal Act in force in the North-Western Provinces (No. XXVI of 1850) was passed, and that a good deal of experience had necessarily been gained during the years that had since intervened. Moreover, the Act of 1850, which was formerly

applicable to the whole of India, had remained in force in its entirety in the North-Western Provinces only up to the present time; in every other part of the empire, he believed it had been superseded or amended by subsequent legislation. Bengal and Madras had their separate Municipal Acts. In Bombay, he understood, though Act XXVI of 1850 had not been entirely superseded, yet it had been supplemented and amended, and its deficiencies supplied, by two or three subsequent enactments. For the Panjáb, a Municipal Act was passed by this Council only last year, and the same Act was made applicable to Oudh and the Central Provinces. This consideration of itself was sufficient, *primâ facie*, to support the claim of the North-Western Provinces to a revision of the existing law by which municipalities in the North-Western Provinces were governed. In regard to the particular points in which the provisions of the existing law appeared to be deficient or to require amendment, in the first place, he would mention that the existing Municipal Act could not be introduced into a town unless it appeared to the Lieutenant Governor (so the Act was worded) that the inhabitants were desirous of repairing and cleaning their streets, preventing nuisances, and so on; but it seemed to him to be well remarked by Mr. Robertson, in the memorandum to which he had already alluded, that it would be about as wise to withhold the establishment of schools until the mass of the people were clamouring for education, as to decline to introduce municipal government until the mass of the people urgently demanded it. If an efficient municipal administration was really for the good of a town—which, he imagined, no one would question—its introduction ought surely to rest with the Local Government, and should not be made to depend upon the wishes of the mass of the inhabitants, most of whom were probably ignorant persons, quite unable to appreciate beforehand the advantages they would derive from it. Again, it was considered that some alteration in the constitution of the Committees was absolutely necessary. By the existing Act, only the Magistrate of the District, and such number of the inhabitants of a town as the Lieutenant Governor considered necessary, could be appointed Municipal Commissioners by the Lieutenant Governor; the appointment by election of any of the Commissioners was not recognized at all: but though the election of Municipal Commissioners was not recognized in the Act, it appeared from Mr. Robertson's memorandum that a system of election had been established in some towns. In one place under the Government of the Panjáb, he remembered, to which Act XXVI of 1850 had been extended, recourse was had to the somewhat extraordinary method of allowing the Committee to alter its own constitution by a bye-law which provided for the appointment of members by election. But, surely, if the election of Municipal Commissioners was desirable, it ought not to be established in

such an irregular manner, but should be distinctly recognized by the legislature. Provision had therefore been made for the appointment of Municipal Commissioners by election wherever the Lieutenant Governor thought fit to sanction the system. It was not thought desirable to require the appointment of Municipal Commissioners in all cases by popular election; but as the system had already been introduced into some towns, though there was no recognition of it in the existing Act, it might fairly be concluded after its recognition by this Bill, that the Lieutenant Governor would extend it to all towns to the circumstances of which it might appear to be suited, and where it was in accordance with the wishes of the inhabitants.

As regarded the number of *ex officio* members, it ought not to be limited to the Magistrate of the District as in the existing Act, but should certainly include also the Executive Engineer, the Civil Surgeon, the Resident Magistrate, as well as any other Government servants likely to be useful members of the Committees. Provision had accordingly been made in this Bill for the appointment of additional *ex officio* members; but to prevent any undue preponderance of the official element, it was laid down not only (he referred to section 6 of the Bill) that the number of *ex officio* members should not be more than one-third of the total number of the Committee, but also, in section 9, that the quorum necessary for the transaction of business at a special meeting, that was to say, when the most important business had to be transacted, should consist of non-official members in the proportion of at least two-thirds to the official members.

Another omission in the existing Act was, that the Committees were not placed under any obligation to provide out of their funds for the maintenance of a police establishment—the Government could raise the necessary funds by putting in force another Act, XX of 1856, which did not require the Committee to be consulted in any way—nor did it give them any option as to the kind of taxation by which these funds were to be raised. It appeared better, however, as this Bill did, to lay it as a first duty on the Committees to provide funds for the municipal police. Moreover, this Bill required that the Committees should be consulted in regard to the strength of the police force required; while, by the existing law, it was not necessary to consult them in any way whatever. Again, by this Bill, the Committees might provide for educational institutions, and for poor-houses, dispensaries, and other things not contemplated in the existing Act. The utility of such institutions was not very likely to be questioned, he imagined, in these days, even for India. For instance, unless provision was made for the infirm and helpless, a bye-law so desirable as one which should prohibit begging and the exhibition of

sores and loathsome diseases in the streets could hardly be justified. Again, the existing Act contained no provision for appeals on the part of individuals against the unequal distribution of any rate or assessment that might have been decided on. Section 12 of this Bill, however, gave the Lieutenant Governor power to make rules for the confirmation of any assessments imposed by the Committees. Again, the power of cancellation and suspension of the acts and proceedings of Committees and of abolishing taxes, which was not given by the existing Act, but was given by section 21 of this Bill, appeared really necessary, considering the number of places in which Municipal Committees would probably be appointed if this Bill became law, and the ignorance that would probably be displayed by some of these Committees during the earlier period of their existence. It would be seen, however, that the Select Committee to which this Bill was referred had been careful not to give the Lieutenant Governor any greater control over the Municipal Committees than was thought absolutely necessary, from their having omitted from the Bill the provision made in the original draft for the limitation of the powers of Municipal Committees by the Lieutenant Governor. He was disposed also to look upon the provision made in section 27, for the submission by the Committees to the Local Government, of budgets of estimated income and expenditure, which was not in the existing Act, as one of some importance, not only as enabling the Government to exercise a better control over the proceedings of the Committees with reference to their expenditure, but also with reference to the amount of any new taxation that might be proposed. It was evident from the papers accompanying Mr. Robertson's memorandum which he had there, that the most popular mode of taxation was the octroi. Now, the danger as well as the benefit of this mode of taxation was the popularity of the tax, and the ease with which it was collected; and he was afraid that, when increased rates were proposed, it was often with a view of seeing how much money could be got, without any reference to the particular objects on which it was to be expended, which were sought for afterwards.

It was remarked that the municipal income under the octroi system was greatly in excess of what it was under the former system of taxation. In one or two places, the increased income yielded by the octroi was incidentally mentioned; for instance, in Etáwa, they were told that the Commissioners now levied six times as much as they were ever able to do by the house-tax: and again, in Farrukhábád, it was noted that the octroi income was upwards of Rs. 80,000, whereas the income from the old chaukidárí was about Rs. 25,000 per annum. It was by no means clearly shown that there was

any distinct necessity for such a large increase of taxation: the Local Government, however, with a budget of proposed expenditure before it, would, he should hope, be better able to determine how far it was advisable to sanction any proposed increase of taxation, or whether it might not be proper even to abolish, or reduce, the rate of some existing tax. It was evident that considerable pains were taken in the North-Western Provinces for preventing the octroi from becoming a transit-duty, though he was afraid, whatever arrangements were made, the duty could never entirely be confined to goods consumed within the towns. Most towns were great commercial centres in which the produce of the surrounding country was brought up, to be exported, perhaps after a considerable interval of time, to other places. No attempt appeared to have been made in any municipality to give a drawback on such exports, nor perhaps was there any objection, even in principle, to the octroi being taken under such circumstances, provided the rate was kept low. The octroi rate, it seemed to him, ought always to be kept as low as possible; it should rather be regarded as a substitute for other modes of taxation, than as a means of raising six times as much revenue.

In several other respects also, he thought, this Bill would be found to be an improvement on the existing Act, but those he had adverted to would, he trusted, be sufficient to show the Council that further legislation in regard to municipal matters was really necessary; and if the Council was satisfied that the provisions of this Bill were as good as the knowledge and experience of which they were at present in possession could make them, then he trusted it would not hesitate to give its sanction to this Bill.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART begged to express his full concurrence with the Hon'ble Mover when he said that the Bill had been much improved by the Select Committee. MR. SHAW STEWART thought it immensely improved. There were only two material points in which he differed from the conclusions arrived at by the Select Committee. One of those was the fifth section of the Bill, which provided that the operation of Act XXVI of 1850 should cease in the North-Western Provinces, and that municipal corporations established under that Act should be reconstituted under this Act. As he said before, he could not but regard this as an unauthorized interference, and, if he was right in judging of the people of one part of India by what he knew of them in another, he thought that they would regard this as a grievance. But in consideration of the strongly expressed opinion of the present Lieutenant Governor of the North-Western Provinces (who was a member of the Select Committee), that it would be very difficult and inconvenient if some towns held under one law and some under

another, he did not consider it desirable to press the point. The other matter was referred to in the amendments of which he had given notice, and which he would proceed to move.

The Hon'ble MR. SHAW STEWART then moved that the following two sections be substituted for section 6 :—

6. In any municipality to which this Act is extended, the Lieutenant Governor shall, at the time of declaring its introduction, appoint a Committee for the purpose of carrying out the objects of the Act, of which not less than two-thirds shall be persons resident within the limits of such municipality.

The resident members so appointed shall not be fewer than six, and shall consist of a number evenly divisible by three; and one-third of them shall be nominated to hold office for the period of two years from the first of January immediately after the date of appointment; one-third for four years, and one-third for six years, in such wise that one-third of them shall retire in rotation every two years.

Any vacancies caused by such retirements in rotation shall be filled up by election under the rules to be prepared and sanctioned in the manner hereinafter prescribed, or failing such election, by the appointment of the Lieutenant Governor.

Any vacancy caused by the death, resignation or removal of a member during the period for which he is appointed, may be filled up by a person to be chosen by the Municipal Committee, and any member so chosen shall hold office for the unexpired portion of the period of office of the member so deceased, resigned or removed.

The Lieutenant Governor may remove any member who shall have been convicted of an offence punishable under the Indian Penal Code with imprisonment for a period of not less than six months, or any member who shall have become disqualified or shall express his unwillingness to act as a Municipal Commissioner.

The Lieutenant Governor may at any time, if he shall see fit, on the requisition of the Committee, increase the number of Commissioners in any manner not inconsistent with the provisions of this Act. The additional members shall be elected under the provisions hereinafter contained, or failing such election may be appointed.

The Lieutenant Governor may appoint any other persons to be members by virtue of their offices, or otherwise, provided that such members shall at no time exceed one-third of the whole number of the Committee; and the Lieutenant Governor may at any time revoke and annul any such appointment, and may appoint other persons.

7. As soon as practicable after their appointment, the Committee shall prepare and submit for the sanction of the Lieutenant Governor rules for the biennial elections of Municipal Commissioners in the place of those who retire in rotation, and such rules, when sanctioned by the Lieutenant Governor, shall remain in force until altered or amended by the Municipal Commissioners with the sanction aforesaid.

These rules shall fix the qualification required to entitle a person to vote for the election of a Municipal Commissioner, and shall provide for the registration of such electors and the place and mode of election.

Every such election shall be completed not less than thirty days before the expiration of the period of office of the retiring members, and shall be reported by the president or vice-president of the Committee to the Lieutenant Governor, and failing such election and report, the Lieutenant Governor may appoint duly qualified persons to be Municipal Commissioners in the place of those retiring in rotation.

Until rules for such elections shall have been prepared by the Municipal Commissioners and sanctioned by the Lieutenant Governor as aforesaid, the Lieutenant Governor shall appoint duly qualified persons in succession to the members who retire in rotation: provided that if the Lieutenant Governor refuses to sanction any rules duly prepared and submitted by the Municipal Commissioners, he shall record his reasons for such refusal, and shall communicate them to the Municipal Commissioners.

No Municipal Commissioner who retires in rotation shall be eligible for re-election or re-appointment for the space of two years from the date of such retirement. This shall not, however, apply to the election by the Municipal Committee, under clause 4 of the preceding section, of any person to fill vacancies other than those caused by retirement in rotation.

Every member elected or appointed to fill a vacancy caused by the retirement in rotation of another member, shall hold office for six years from the date of such appointment or election.

Also that, in line 20 of section 9, the word "resident" be substituted for the word "non-official."

He said that the first attempt to establish the germ of municipal self-government in India was made in 1850, by Act XXVI of that year. This Act provided in the most general manner for carrying out the principle of entrusting to the people of the town the duties of raising money for municipal purposes and expending the municipal funds. All details were left to be filled up by order of the executive. As this Act was extended to the various provinces of India, it might have been expected that the principle of popular representation and self-government would have been carried further and further; but this had not been the case, and almost all legislation that had taken place since 1850 had had the tendency of arresting the growth of popular influence and increasing the official influence. He (MR. SHAW STEWART) thought that this was much to be regretted, and that the forgetfulness of the principle of the Act of 1850 would strike a blow at the success of the municipal institutions they were attempting to create. It was true that, in this Act, the Lieutenant Governor had the option of appointing the Commissioners, or directing their appointment by election; but he was not confident as to the mode in which that option would be used. In the case

of the Panjáb Act of last year, when a similar option was given, he was disappointed to find that, in a circular order issued almost immediately after the passing of that Act, the Panjáb Government deliberately rejected the alternative of election. He would read an extract from the order of the 17th April last, published in the Administration Report of the Panjáb—"Ordinarily a system of appointment by careful selection and nomination will be preferred to one by popular election." And throughout the circular referred to, which was of great length and went into minute details on all points, there was not a word about election. He feared that something like this would be the case with the present Bill, and had therefore proposed this amendment. He was sorry that it had not the benefit of the Select Committee's consideration. The scheme was not ready on the day that section 6 was considered and passed; and when, on a subsequent day, he submitted his amendment to the Committee, it seemed to be thought generally desirable that he should bring it up before the Council. The amendment provided that, on the first introduction of the Act into any town, a Committee should be appointed by the Lieutenant Governor in the same manner as was proposed in the Bill; and that one of the first duties of the Committee so appointed should be to draw up rules for regulating the election of their successors, and that when these rules were sanctioned by the Lieutenant Governor, vacancies in the Committee caused by the retirement of members should be filled up by election. He had purposely left the widest scope for the mode of election to be prescribed by the rules. The election might be general, by the whole tax-payers, or the town might be divided into wards, and each ward have one or two representatives, or each influential caste or guild might have its representative. The mode best adapted to each town would doubtless be selected by the first Committee and the Local Government. He had been intimately connected for several years with the municipal commission of one of the largest towns in the Bombay Presidency, and one in which municipal institutions had succeeded better perhaps than in most. He meant Karáchí. Twelve years ago the principle of election was applied to Karáchí, and rules were laid down under which each important guild or fraternity of the inhabitants obtained the right of electing its representative or representatives. The result was that, in Karáchí, there was a maximum of self-government and a minimum of official interference. Being personally unacquainted with the North-Western Provinces, he was unable to judge how far the example of Karáchí should be followed there, but unless there were strong objections, based on local grounds, to the proposal, he trusted the Council would approve of it.

The Hon'ble Mr. Maine was not in India when the Select Committee came to a decision adverse to the principle of his Hon'ble friend's amendments.

He was therefore desirous to state the reasons which had led him, independently, to the same conclusions as the Committee. When the Bill was originally submitted to the Council, there appeared to have been a certain lack of information, but there had subsequently come a memorandum from the North-Western Provinces, which MR. MAINE did not think had been misdescribed by his Hon'ble friend Mr. Brandreth as excellent. In that memorandum there was used a term which had become of late politically famous—'educate.' It was said to be the object of the Lieutenant Governor of the North-Western Provinces to educate the Natives of that part of India for municipal institutions. The view did not seem to differ from that which appeared to have been recently expressed in that room by His Excellency the Governor General. The Natives of India cared little antecedently for the objects sought to be obtained by municipal institutions; but after being for a time accustomed to cleanliness and decency, it was alleged that they began to appreciate them, and the improvement in the public health which was their result, and that in the end they would even co-operate in giving effect to sanitary measures. Now, the true effect of the amendments proposed by his Hon'ble friend MR. SHAW STEWART was to fix an arbitrary period within which this education was to be completed. As MR. MAINE read the amendments, they proceeded on the assumption that all municipalities in the North-West would in two years at most be prepared for municipal institutions, and beyond this, that the Municipal Committees would be prepared to lay the foundations for a system of popular self-government. Now, speaking as an English Member of Council, he must say that it was surprising that the Natives of India should be fit for municipal government at all. While municipal institutions on the European model were here of recent date, they had had in Europe an almost unbroken history of two thousand years, and yet those who most recognized their advantages could not help confessing that they were compensated by many disadvantages and drawbacks. Sometimes municipalities were corrupt, sometimes they were guilty of petty tyranny: sometimes they erred on the side of extravagance, sometimes on that of parsimony. It was impossible not to see that, even in England, where there was a disposition to give them the fairest trial, the Acts called the Local Government Acts, which had given extension to the area of self-government on one side, had greatly controlled and limited it on the other. As, then, all the temptations and misleading influences which produced the occasional miscarriage of municipal institutions in England operated with far greater force in this country, it was matter of surprise that those institutions could be established here with useful result. As, however, gentlemen of great local experience assured MR. MAINE that it was possible here to have municipal institutions with no more than a reasonable amount of corruption and mismanagement,

he of course bowed to their opinion. But if it was surprising that municipal institutions should flourish at all in this country, still more wonderful was it that they should in any case be based on a system of popular representation. Surely this, at all events, might be asserted on the strength of English experience, that it was a most difficult, if not an insoluble, problem, to create a constituency or set of constituencies, in which one class should not have the power to oppress the others, or to protect itself at their expense. Considering how Native society was divided into castes and sects and religions and races, it was surprising that there should be practicable, anywhere, a system of municipal election at once fair and free. As, however, MR. MAINE found such passages as the following in the memorandum from the North-West, he was bound to attach weight to them :—

"Towns like Bolundshuhur, Meerut, Banda, Allahabad and others have been divided into wards, each returning its member or members annually, and the qualifications of membership and of the electoral franchise have been defined, and in every sense the Committee is a representative one, freely selected."

Whether the *s* at the beginning of 'selected' was a clerical error, or a stroke of irony, MR. MAINE could not say; but assuming that the meaning was that there was free election in these North-Western cities, he could only believe it, though his faith was feeble. When, however, his Hon'ble friend Mr. Shaw Stewart came and told them that there was no Native city in India, however divided and however dirty, in which the materials for founding within two years a system of popular election did not exist, MR. MAINE must say he began to doubt. His Hon'ble friend had, in fact, concealed from himself the magnitude of his proposal by throwing off the burden of solving the problem on other persons. Clause 1 of section 7 of the amendments ran as follows :—

"As soon as practicable after their appointment, the Committee shall prepare and submit, for the sanction of the Lieutenant Governor, rules for the biennial elections of Municipal Commissioners in the place of those who retire in rotation, and such rules, when sanctioned by the Lieutenant Governor, shall remain in force until altered or amended by the Municipal Commissioners with the sanction aforesaid."

What was the exact system which his Hon'ble friend contemplated did not appear clear to MR. MAINE. His Hon'ble friend's language left it doubtful whether he had in view a system of universal suffrage, or a system of rotten boroughs. But at all events it was to be taken for granted that, in all Indian cities, there was a number of intelligent Natives who were capable of solving the problem which had perplexed the British Parliament for thirty years. It was true that, under clause 4, the Lieutenant Governor might reject these rules. But let the Council see what might occur. MR. MAINE knew little personally of the North-West; but he did know that, in some of the North-Western cities,

Hindús and Muhammadans were mixed together, and it was all that the administrative skill and vigour of English officials could do to keep peace between them. Now, suppose the Lieutenant Governor had appointed originally, under the provisions of his Hon'ble friend's amendments, a Committee of respectable gentlemen who were all or mostly Hindús, and suppose that they had submitted a set of rules which would have the effect of entirely excluding the Muhammadans. The Lieutenant Governor would reject these, and would record his reasons for so doing. But they might be perpetually re-submitted by the Committee, which would soon learn its advantage. Surely it would be seen that this perpetual submission and rejection might cause a chronic irritation and fret, which would constitute a grave political danger. What the opinions of the late Lieutenant Governor of the North-West were (and they were shared by the present Lieutenant Governor) would be seen by the passage which he would quote:—

"There are towns in which the system of a popular election would not conduce to good government. Either the number of citizens who, by their intelligence and public spirit, are capable of serving is so limited, that there is little room for selection if a working Committee is to be had, or those whose influence must be respected would not act with persons chosen indifferently. Especially is it necessary on the first introduction of a system to conciliate those who are the leaders of society, and to use only the material which, by education and natural ability, is most fitted to perform the duties of the post. It is only to the care in attending to this that, in not a few instances, the success in the working of the Act is due. Very recently, when the Act was introduced into the important town of Benares, the Lieutenant Governor was anxious that at least a portion of the Committee should be elected by the citizens, and suggested this to the Committee of the leading residents appointed to draw up the rules, but the proposal did not meet with a favourable reception. Those Native gentlemen who were unquestionably the most public-spirited and intelligent in that large town, thought that it would be unwise to introduce such a system until the Act had been in operation for some time, and its objects and the duties of the Committee were better understood. The Lieutenant Governor, convinced that they were themselves the best judges on this point, consented to the postponement. Ultimately, even if the present Act remains in force, the rules now in force there will be popularized as they have been elsewhere. Had the Act rigidly prescribed that only by election shall the Committee be chosen, it is not rash to assert that the result would often have been failure, not success. It is the interest of Government that the system shall work smoothly. There is no desire to force improvements rapidly on the people against their will. Undue haste would defeat the wishes of the Government, but as the people understand and appreciate the system of municipal government, and are fitted intelligently to take their part in it, their privileges have been and will be enlarged. It is not to be expected that the citizens can at one bound pass from the position of utter powerlessness, to the enjoyment of the fullest freedom as Commissioners or electors. Their powers must be increased gradually. By exercising a little, they become fitted to exercise larger powers, and the Government, assured of their fitness, will not be slow to enlarge them."

Was, then, the Council going to force on the Lieutenant Governor of the North-Western Provinces a system of which he did not approve? This was a

particularly strong case. The only members of the Select Committee who had differed from its conclusions were his Hon'ble friend Mr. Shaw Stewart and Mr. Minchin, who represented (if it was proper to use the word) Bombay and Madras. MR. MAINE did not in the least doubt that, in alleging the general practicability of a system of popular election, they stated no more than their personal experience in the Southern and Western Presidencies warranted. Now, when this Council was enacting a law for all India, it was sometimes inevitable that they should apply to parts of the country principles which had been more thoroughly tested in other provinces. But this Bill would affect only the North-West. The Council was in fact sitting as the local legislature of the North-Western Provinces. If the theory of the Indian Councils' Act were fully carried out, there would be a local Council for those provinces, within whose strict competence the present Bill would have fallen. It was only through an accident that the Supreme Council assumed jurisdiction over the Bill. Would, then, the Council make itself the instrument or agency for forcing on the North-West the results of Madras and Bombay experience? If they were sitting at Agra or Allahabad, and the Lieutenant Governor of the North-West, occupying the chair now occupied by his Honour the Lieutenant Governor of Bengal, were to say (as in effect they knew he would say) that the scheme of his Hon'ble friend was dangerous or impracticable, MR. MAINE felt sure it would be at once pronounced inadmissible.

The Hon'ble MR. MINCHIN said that, as his name appeared as not entirely agreeing with the report of the Select Committee on this Bill, he wished to make a few remarks. He believed that no one reading the original Bill as presented in this Council two months ago, and comparing it with the revised Bill now brought forward, would think that the unusual amount of discussion and labour bestowed on the Bill in Committee had been thrown away. So great were the effects of those alterations that he could cordially support the Bill as it stood, with very slight, if any, exception. Some of those alterations had been effected silently, and had not even been alluded to in the report. In the original draft of the Bill, a municipality was defined to be a village or tract of country, words which he was glad to find omitted from the Bill as amended, in which the action of municipal law was strictly confined to towns. He thought that the power of imposing the municipal system, and municipal taxation, on any tract of country, and the agricultural communities, would be a most dangerous one to place, in this country, in the hands of any Local Government. He would not, however, take up the time of this Council by enumerating objectionable things removed, and again killing the slain. He remarked, however, that what in his opinion was one of the marked

improvements effected in Committee—the limitation of the scope of taxation—was not approved of by his Hon'ble friend the Mover. He stated that, in his opinion, the tax called Haisiyat, which appeared to be a species of rough income-tax, assessed by the people at will, should have been permitted, and that the tax on conveyances was of very doubtful propriety. These changes he considered the more objectionable as being in opposition to the wish of the Lieutenant Governor. Upon this, MR. MINCHIN was inclined to ask, under *which* king, Bezonian? *Le Roi est mort, Vive le Roi,* and it seemed to him that they had the name of the Lieutenant Governor attached to the report of the Select Committee as agreeing throughout with their recommendations. He thought, therefore, that his Hon'ble friend was in error in saying that those limitations on taxation were introduced in opposition to the wish of the Lieutenant Governor, who, as far as his own feelings went, worked cordially with the Select Committee throughout their discussions, and, he thought, agreed with the result obtained. MR. MINCHIN thought the specified limitation on taxation to be most valuable. The chief object, as he took it, in encouraging municipal action, was to relieve to some extent imperial taxation by taxes self-imposed; and he thought it was of the greatest importance that the two, imperial and municipal taxation, should not clash. He thought it would be a great boon if the Supreme Government were to allot certain classes of taxes for local purposes, which should never be included in the scheme of imperial taxation. They were doubtless all aware that, when the imperial license-tax was imposed last year in the Madras Presidency, some trouble, and disturbance even, was created from the fact of the tax having been already levied for municipal purposes. People did not like being taxed twice over, and he thought it would be a very great boon indeed, if, in order to foster the municipal system, the Imperial Government would set aside certain sources of taxation for local purposes.

He came now to the one point in which he apparently differed from the majority of the Committee, as to the best mode of appointment to Committees. And here, after the very strong expression of opinion from his Hon'ble friend Mr. Maine, he felt peculiarly the difficulty of his position, to have forced upon him the necessity of replying to such an antagonist:

Infelix puer, atque impar congressus Achillis.

His Hon'ble friend told them that it was allowed everywhere that the people must be educated up to the Act, and yet that, in the amendments proposed by his Hon'ble friend Mr. Shaw Stewart, an arbitrary time, and that the short period of two years, was fixed for such development. He confessed that he could not so read the amendments of his Hon'ble friend. It appeared to him that the sole difference between his proposals, and the Bill as amended by

the Committee, was that here, after the first appointment by nomination, all vacancies that might occur according to the system devised were to be filled up by election, provided that the municipality drew up suitable schemes for selection, which would satisfy the Lieutenant Governor, and conduct their election accordingly within the period prescribed; while, under the Bill the system of nomination or election was at the will of the Lieutenant Governor. Did his Hon'ble friend's amendments say, in effect, as advanced by the Hon'ble Mr. Maine, that every town was already fit for popular representation? He could not see it in that light. It was left to such towns as wished for it to provide the scheme by which election could be granted to them; the cases of such towns as were quoted by the Hon'ble Mr. Maine from the Lieutenant Governor's report, where there was no desire for election, would be unaffected: where the people did not want election, they would not ask for it or provide a scheme for it, and it would not be imposed upon them. Under the provisions of the amendments proposed by his Hon'ble friend, such towns as would like the system of election would be more likely to obtain their wish than under the section of the Bill proposed by the Committee, and on that account he preferred the amendments. In this country, they knew that they could depend so perfectly on the honesty of purpose of English officials, from the highest to the lower ranks, that they trusted implicitly to that, instead of taking those safeguards against personal failings which were insisted on in constitutional countries. He thought it would be better for this country if the same principle were more acted on here, and he should like to see the introduction of the elective principle in municipalities less dependent on personal action of the authorities.

It might be said that the whole attempt to make municipalities elective was a sham; if he were not afraid of the charge of cynicism, he might allow it, and would say that it was a beneficial sham. In the Bill as now settled in Committee, there was an important provision, under which no taxation could be imposed, and no expenditure sanctioned, except at a special meeting of the municipality, at which two-thirds of those present must be non-official members. This was a real commencement of the principle he advocated, of working *by* the people, and not only *for* them. By this provision, the non-official members of the municipality had in their own hands, if they chose to exercise it, the power of local taxation, and of the not less important field of local expenditure. As he said before, he took it that the chief object in fostering municipalities was to relieve imperial expenditure, and to meet certain necessary outlays by taxes levied by the people. By increasing the area of popular interest in these concerns, this benefit was increased; and he was sure it

would be a vast relief to his Right Hon'ble friend Mr. Massey, whose absence to-day he much regretted, if, in bringing forward his budget to-morrow, he were able to rely upon a large and increasing revenue from taxes imposed upon themselves by the people.

MR. MINCHIN did not know whether his Hon'ble friend Mr. Shaw Stewart would persevere with his amendments: probably he would be contented with the discussion of this important subject which they had provoked. He considered that the closing argument of his Hon'ble friend Mr. Maine was definitive as to any action in this matter. He was sure that his Hon'ble friend Mr. Shaw Stewart and himself had no idea of forcing their own views upon Presidencies with which they were not connected. At the same time he would that Hon'ble gentlemen, who were afraid of the elective principle, would take courage, and open their eyes to the mighty support which popular co-operation gave to the performance of official duty.

The Hon'ble MR. STRACHEY said that he so heartily agreed with the remarks made by the Hon'ble Mr. Maine, that but for one fact he would not have considered it necessary to say a word. MR. STRACHEY had lived in the North-Western Provinces the greater part of his Indian life, and for that reason he ought not to remain altogether silent. The Council had heard a great deal, both in the present discussion and on a former occasion, about popular views and popular representation. It appeared to him, however, that under existing circumstances these were mere words; they meant nothing, absolutely nothing. The Hon'ble Mr. Minchin had observed that, although the proposed system might be a sham, still it might be looked on as a beneficial sham. It seemed to him (MR. STRACHEY) that, although it often happened that old political institutions which once had a meaning in time degenerated into shams, yet to suppose that newly created shams could ever develop into valuable institutions was altogether visionary.

The Hon'ble MR. TAYLOR said that, as he was prevented from attending the Council, and joining in the debate which ensued on the occasion of the introduction of the Bill, he desired to state very briefly his views on the general question under discussion, and the reasons why he found it impossible to support the motion of his Hon'ble friend. He believed that the people of this country were as capable of representative government as any other nation of the world. But they were not as yet, as a general rule, sufficiently accustomed to the duties and responsibilities it imposed, even in municipal affairs administered according to our forms, to be able to stand altogether alone. No one, not even his Hon'ble friends Mr. Shaw Stewart and Mr. Minchin, would be willing to go further than himself in the direction of the elective principle.

He had always maintained that it should be the aim of the Government to improve and strengthen independent municipal action to the utmost of its power, to encourage the people to undertake for themselves what they could do far better than the State, and by this means to develope a spirit of self-reliance and teach them self-government. He believed that the town and rural populations were easily reconciled to local cesses of various descriptions, even when they were innovations upon popular ideas and customs, provided these cesses were imposed for definite objects connected with their own interests, and their own convenience and well-being. And speaking from personal experience, he could also state with confidence that their acquiescence in any well-devised measure of taxation for purely local and municipal objects was usually very readily obtained when they were invited and trusted to take an active part in its administration. But the influence to which they must look to promote and foster this feeling of self-reliance, and to secure an active co-operation in measures of local reform, was the guiding hand of the head of the district. They must not attempt to strain the elective principle too far at first. The local administration and the district officers in the different Provinces were the best judges when a spirit of responsibility was sufficiently matured to admit of the election of representatives independently of Government control. No doubt considerable tact and judgment were required, and a grave responsibility attached to the officers of Government in this matter. The more they popularised the system of local taxation, the greater would be their success; and, as Mr. Minchin had observed, the lighter and pleasanter would be their administrative duties. Two important principles, it seemed to MR. TAYLOR, should ever be kept in view. One was that the contributions for the purposes of municipal improvement should be made in the form best suited to the convenience and wishes, the tastes and habits, of each town community—whether it were a tax on houses or shops, an octroi, or a license-tax on trades and professions:—and the other was that, in whatever form it might be levied, the people should clearly understand that it was altogether separate and distinct from any tax for imperial purposes. The greatest danger to be apprehended was that, under a system which practically gave to the Local Government, and to the head of each district, a large power of control, and under which the municipal corporations would act under the immediate influence of a European official, taxation might be pushed too far, irrespective of the general wishes of the Native community, and an extravagant expenditure be incurred upon objects in which they had no concern or interest, and independently of strict Government sanction. Such a result, it must be admitted, would best be avoided by conferring upon the chief tax-payers, wherever, and as soon as, they were fit for it, the right of nominating their own representatives; and by conceding

to those representatives the power of examining the several charges, and pronouncing upon their moderation or otherwise, and of giving an opinion as to the suitability of the objects upon which the expenditure was incurred. The cause of our past failures to introduce anything approaching to healthy municipal action was, he feared, to be found in the fact that such action had hitherto been chiefly directed to the levy of taxes, without any real earnest attempt to confer upon the communities who provided the money any of the corresponding rights and privileges. The people were simply required to pay, and the money was spent without reference to their wishes.

A different state of things had, however, been successfully brought about in some parts of India, where a similar law to that which had now been introduced for the North-Western Provinces had been for some time in operation. In some districts of the Madras and Bombay Presidencies, and in the Panjáb, the people had been invited to elect their representatives, and might be said to have a real voice in the administration of their affairs. That such was the case also in the North-Western Provinces, they had the assurance of the Lieutenant Governor who had just retired, in the passages of the memorandum of the Under Secretary to which his Hon'ble friend Mr. Maine had especially referred. The Bill, as it now came from the hands of the Committee, expressly provided for the extension of the system of popular election, whenever the circumstances of a particular locality were favourable to its introduction, and it seemed to him therefore for the present to go far enough. They knew that the present Lieutenant Governor, who was himself a member of the Committee, heartily approved of its provisions, and under his administration they might confidently look for the gradual introduction of a real elective principle into the constitution of the municipalities throughout the country.

The Hon'ble Major General SIR H. M. DURAND had occasion, when this Bill was first introduced, to take exception, and very strong exception, to many of the provisions and some of the omissions of the Draft Act as at first submitted, for it appeared to him one of the worst drafts he had seen laid on this table. He had compared section by section the Bill as it had now issued from the hands of the Committee, with the original draft, and he entirely agreed with the remark of the Hon'ble Mr. Minchin, that the Bill as now presented was a very different one from the first. The Committee had evidently gone very carefully into the details of the Bill, and had greatly amended and improved it in almost every point on which he had occasion formerly to animadvert. It insured returns of the municipal taxation to the Local Governments, and through them to the Government of India. The paper from the North-Western Provinces showed the importance of such information, and in future the

Financial Member of the Governor General's Council would be able to judge of the incidence of this searching municipal taxation over the length and breadth of India, a matter of importance in connection with general or imperial taxation. The power of raising loans on debentures was taken away. Sufficient provision seemed made, in his opinion, for the development of the elective element, for which the Hon'ble Mr. Shaw Stewart contended in his amendments. Where circumstances were favourable, though it might prove a slow process, the people might be educated gradually to discharge elective functions in connection with their municipalities. Every thing considered, the Bill, as now laid on this table, was so improved that it commanded his willing assent

His Excellency the Commander-in-Chief said, the discussion which had taken place had somewhat wandered from the amendment which was before the Council. His Excellency believed that it would have been more regular if Hon'ble Members had adhered to the course pursued by the Hon'ble Mr. Maine in keeping close to the subject of the Hon'ble Mr. Shaw Stewart's amendment. But as the discussion had wandered in that manner, and a discussion on the general principles of the Bill had taken place, His Excellency the President would excuse him if he followed the example that had been set, and offered a few remarks on the general subject. Like the Hon'ble Sir Henry Durand, His Excellency had taken a part more prominent than he could have wished in objecting to the Bill as it was originally sent down from the North-Western Provinces. Having been put on the Committee by the Hon'ble Member in charge of the Bill, His Excellency was able, in conjunction with the present Lieutenant Governor of the North-Western Provinces (Sir William Muir), with the Right Hon'ble Mr. Massey, and other Hon'ble Members, so to consider the various objections urged, which were more or less started in the previous debate, as to come to a satisfactory compromise with the Hon'ble Mr. Brandreth. The result was that, while it appeared from the Bill as introduced, that what might be called the popular interests were not sufficiently attended to; while it appeared that the direct action of the Lieutenant Governor was to override anything like the views of the people in any form; while it appeared that, not only the Lieutenant Governor, but the Commissioner of the Division, might walk into any Committee-room and strike out all that had been done, all those objections had been removed by the Committee. Consequently, His Excellency had no hesitation in thus meeting the views of Mr. Brandreth, assisted as the Committee had been by the very courteous and cordial manner in which His Honour the present Lieutenant Governor of the North-Western Provinces met the objections of those who, like His Excellency, had taken a part in the

previous debate. His Excellency thought he was not in any manner committing the Lieutenant Governor in saying that the compromise which had resulted had his full assent, and this was an extremely important point with reference to the argument pursued by the Hon'ble Mr. Minchin.

As the Right Hon'ble Mr. Massey was not present, His Excellency would invite attention more particularly to the question of debentures. Great opposition was expressed on that question in the previous debate. Mr. Massey declared in very emphatic terms that the whole credit of the Supreme Government would be engaged, and that, in the case of a defaulting municipality, the Supreme Government would have to make good the deficit. Such words from such an authority must carry an enormous weight, and if the Committee had been inclined to admit the principle in particular instances, His Excellency thought that, in the face of such a declaration, they would have been obliged to strike out the debenture clauses, as had in fact been done. But while the Committee had done that, His Excellency did trust that the Supreme Government would listen to the counsels of his Right Hon'ble friend, and come to the assistance of municipalities for the prosecution of public works of a minor character, in a manner which was well known in England, and of which we had an example in what was done in the city of Calcutta last year.

Reference had been made to the memorandum which had come from the North-Western Provinces. His Excellency cordially concurred with the observations which had been made as to the excellence of that memorandum; but he could only regret, on the part of the Government of the North-Western Provinces, that the information now placed before the Legislative Council had not come to the executive Government before the Bill was introduced, in order that Members circumstanced like himself might not have been allowed unnecessarily to enter into an opposition. His Excellency did not think it fair towards Hon'ble Members of Council, that they should be called on to pass measures involving important principles without ample information from the local authorities. That information came in the present instance, not spontaneously from the Government of the North-Western Provinces, but it was forced from them by the opposition raised to the very imperfect Bill sent down for the consideration of the Council.

Sundry remarks had been made on the question of local taxation, and more especially with reference to the octroi. His Excellency would go along with the Government of the North-Western Provinces; if the people chose to impose on themselves octroi duties, they should be allowed to do so. It was better for them to learn from experience, than that any arbitrary rules should be imposed

on them by the Supreme or Local Government. On that point, however, there was some very important information in the memorandum which had already been referred to, and to which His Excellency wished to invite the attention of the Council. Thus it appeared that the cost of collection of that popular tax was in some instances something extraordinary. The cost of collection amounted almost to one-third of the proceeds of the tax. Let us take the case of Secundra Rao. It was stated that, there, the cost of collection was 33 per cent. At Besalpúr it was very nearly 21 per cent., at Bijnúr 20 per cent., at Dhanaura 25 per cent., at Mainpúri 31 per cent. That was not a matter of theory, but of practice. Here it was stated that, owing to their extravagant ignorance, the people set to work to pillage themselves in a manner beyond belief. As His Excellency said before, let the people have their octroi if they wanted it, but he would entreat the Government of the North-Western Provinces to watch it, and see that such monstrosities might not again meet the eyes of the Financial Member of the Government if he should call for returns this time next year.

With regard to the question of cantonments, His Excellency might remark that, in that very memorandum, it was stated that the annexation (if he might use the term) of cantonments to towns for the purpose of municipal taxation, had in some instances given satisfaction to the people immediately concerned. That assertion being made on official authority, His Excellency was bound to accept it; but there was one point which he was not prepared to accept, but which he was obliged to contradict. It was said that "in all instances it was made with the consen tof the military authorities." His Excellency would remind the Council that he represented the military authorities, and he had no information whatever of any thing of the kind having been done. So completely was that the case, that His Excellency had in some cases only by accident got the information, and had immediately called on those under his orders to explain how they had admitted such a state of things, not only without obtaining the sanction of the Commander-in-Chief, but without making even a report of the circumstances. Therefore, while His Excellency admitted the excellence of the memorandum, he would ask the Council not to attribute complete accuracy to that portion to which he had referred. The whole question of cantonment taxation was at present under the consideration of the Governor General in Council in his executive capacity; His Excellency would therefore refrain from any further remarks on the subject. He was quite certain that the interests of the troops would receive the same attention as that of any other part of the community, and he was only too willing to leave it in the hands of the authority which they all served.

The Hon'ble MR. SHAW STEWART in reply said that the tenor of the speech of the Hon'ble Mr. Maine, and of the observations that had fallen from other Members of Council, left him, he feared, but one course to adopt with regard to his amendment; but before asking the permission of the Council to withdraw it, he would beg to make a few remarks on some portions of the debate, in which he thought the proposed amendment had been misunderstood. Mr. Maine remarked that he understood the gist of his (MR. SHAW STEWART'S) amendment to be, that he considered the inhabitants of the North-Western Provinces would be sufficiently educated in two years after the passing of this Bill to be fit for municipal self-government. He did not know how his Hon'ble friend gathered this from his amendment; but he would simply remark that he must have lost sight of the fact that this education had been going on for eighteen years, and that there were now between 200 and 300 towns in the North-Western Provinces in which these corporations had been in existence for longer or shorter periods. His Hon'ble friend also drew a vivid picture of the political difficulty that might arise from a Committee appointed by the Lieutenant Governor, composed perhaps of Hindús, being entrusted with the preparation of rules for the election of their successors, and the danger of their framing these rules so as to exclude Mussulmans and those of other religions. He did not share his Hon'ble friend's fears, nor could he imagine that he had remembered the powers which this Bill proposed to give to such a Committee. Under section 11, it might decide what taxes were to be paid and who were to pay them; and under section 16, it might pass bye-laws defining nuisances, and for other purposes, and he would ask if these powers could not be used for purposes of annoyance and caste-feuds far more effectively than the power of making rules for elections. It was true that the power given in the eleventh and sixteenth sections of the Bill was subject to the Lieutenant Governor's sanction, but so also were the rules for election proposed in his amendment; and it was also to be observed that the Bill proposed that the Lieutenant Governor might make rules for election, and he very much doubted if he would ever do so without consulting the very Committee to which his amendment proposed to leave the initiation of the rules.

His Hon'ble friend further observed that he had devolved on others the duty of preparing these rules, and seemed to think that he ought to have embodied them in his amendment. He never conceived it to be the duty of this Council to prepare rules for all the towns in British India; but if it was thought to be right that this should be done, he was quite ready to come forward and bear his share of the labour. Hitherto, it had always been the practice of this Council to restrict itself to devolving on others the power of making and enforcing local rules of this nature, and he need not multiply instances of this practice.

The present Bill was full of them. He would therefore reject the Hon'ble gentleman's charge that in this amendment he had attempted to devolve on others any of the duties properly devolving on a lawgiver. He admitted, however, that he had always thought it very desirable that the large towns in the Mofussil should be encouraged to come forward and obtain municipal Acts for themselves, adapted specially to their own requirements. He believed that a far more healthy independent action might so be obtained, than by attempting to bring them all to work under the narrow rules of a single Act. He was unable to concur entirely in his Hon'ble friend's estimate of the duties and responsibilities of Members of this Council when engaged in making laws for territories that had no Legislative Councils of their own. He admitted that it appeared right that no law should be enacted regarding which the Lieutenant Governor of such a territory might assert that its introduction would be dangerous or subversive of good government; but in the present case no such assertion was made by His Honour the present Lieutenant Governor of the North-Western Provinces. He disapproved of his amendment because he wished the option left the Lieutenant Governor of using either election or appointment, but he did not understand him to urge any such strong objection as would necessitate this Council to refrain from acting on their own opinions.

He had only to express his entire concurrence in the remarks that fell from his Hon'ble friend Mr. Noble Taylor: without an encouragement of the spirit of self-government, and of the representation of the tax-payers, no municipal institutions that they could introduce would succeed. He had hoped from his Hon'ble friend's remarks that he would have supported his amendment. He was, however, glad that he had brought it forward, as the principle involved in it was one that could not be too prominently brought into notice, and he trusted it would some day meet with a better reception. He would beg the permission of the Council to withdraw the amendments.

The Amendments were then withdrawn.

The Hon'ble MR. STRACHEY said there was one point on which he thought the Bill was open to serious objection, and he therefore desired to propose an amendment. But under the Rules of the Council, he believed he was unable to do so, because no notice of the amendment had been given by him. He had only lately joined the Council, and was not a member of the Select Committee, and he had had no opportunity till yesterday of looking into the Bill. The matter on which he thought the Bill open to objection was one of considerable importance, and he did not think it would be right (unless His Excellency the President wished him to do so) for him to ask the Council to consider the question until his amendment had been circulated, and the Council had had an

opportunity of examining the matter. The amendment which he wished to propose was in section 11. It appeared to him that the section as it stood gave—or he ought rather to say delegated—a power of taxation, which was practically, he thought, unlimited, to Municipal Committees and the Lieutenant Governor. For example, he would take clause 2—taxes on professions and trades. They all knew of the discussions that had been going on during the last year about the License Act. They were now giving to the Local Committees and to the Lieutenant Governor a power of imposing taxes similar to the License Tax with only this difference, that they gave the power absolutely without any restrictions at all. He thought also that a great deal might be said of the necessity of placing some limitation on the octroi-tax, with respect to which he agreed entirely with what he understood to be the opinion of His Excellency the Commander-in-Chief. But he did not think it would be right now to ask the Council to take his (MR. STRACHEY'S) amendment into consideration without notice. His amendment would be to the effect that, not only should the consent of the Local Government be necessary to the imposition of those taxes, but also the consent of the Governor General in Council. All that he now had to propose was that the further discussion of the Bill be adjourned to the next meeting of the Council.

HIS EXCELLENCY THE PRESIDENT understood that some of the Members of the Council were prepared to consider the amendment at once, but that others desired that the Council should be adjourned. Under those circumstances, HIS EXCELLENCY thought it his duty to put to the Council the question of adjournment. HIS EXCELLENCY was himself in favour of adjournment, in order to allow the Council time for consideration. He understood that the question was considered in Committee, and that the ground of its rejection was that, by its adoption, an unduly large amount of work would be thrown on the Supreme Government. Nevertheless, considering the importance of the question, the course which he thought it most satisfactory to adopt would be an adjournment.

But before adjourning, HIS EXCELLENCY wished to say a few words on some other matters discussed by some of the Members, more particularly HIS EXCELLENCY the Commander-in-Chief. In the first place, THE PRESIDENT thought it right, as a matter of fair play to the Lieutenant Governor who had just vacated office in the North-Western Provinces, to say that, while HIS EXCELLENCY quite admitted that it would have been very much better had the information subsequently supplied been in the first instance sent to the Supreme Government, nevertheless, the whole fault did not lie in the Government of the North-Western Provinces. There was a mistake here, in the Home Department, first, in allowing the case to be sent to the Legislative

Department without the preparation of a Note, which would have supplied a great deal of the information subsequently brought forward. Secondly, there was some degree of laches on the part of the Hon'ble Member entrusted with the Bill in not seeing that such information was obtained.

There was another point to which HIS EXCELLENCY wished to draw attention. He thought Mr. Massey's view, that to grant these Municipal Committees power to raise money by debentures would render the Supreme Government liable for their payment, might be open to misconstruction. HIS EXCELLENCY would not himself admit that, by giving that power to Municipal Committees, the Government of India would have undertaken in any way, directly or indirectly, to make good the payment of moneys so raised. The question might appear unimportant, because the power had been struck out of the Bill; but Mr. Massey's remark might apply to loans already contracted by other municipalities, and HIS EXCELLENCY, on the part of the Government of India, with all respect due to the Financial Member, could not admit that the Government would have been pledged to the payment, and must repudiate the assertion that the Government were in any way responsible. Those loans were made on the responsibility of the municipalities by which they were respectively contracted, and must be discharged by them from the proceeds of local taxation.

The last point to which THE PRESIDENT wished to refer was that which His Excellency the Commander-in-Chief had again mentioned, namely the action of the Lieutenant Governor of the North-Western Provinces with regard to the introduction of taxes in cantonments. Under Act XXII of 1864, it was never maintained that the military authorities could have any voice in the question of local taxation in military cantonments, but the taxation under that Act was limited to a rate on houses, and it did not empower the Lieutenant Governor to introduce new descriptions of taxation, such as the octroi. It was an error on the part of the Government of the North-Western Provinces to have introduced the octroi in cantonments without reference to the military authorities and the Government of India. But while, under the Act of 1864, the consent of the military authorities was not necessary, provided the taxation was limited as laid down in the law, THE PRESIDENT still thought that, as a matter of policy and good taste, it would have been right and proper for the Local Government to have referred the matter to the military authorities as well as to the Government of India. And until he had heard the contrary from the Commander-in-Chief, THE PRESIDENT supposed that it had always done so.

The Hon'ble MR. BRANDRETH said that, before His Excellency the President adjourned the meeting, he wished to say a word or two of explanation in regard to the remarks which fell from His Excellency the Commander-in-Chief, with reference to the apparently excessive cost of collecting the octroi in some towns, on which His Excellency animadverted as indicating great mismanagement.

The cost of collection in the different towns varied, it appeared, from ten to upwards of thirty per cent. It was possible, however, that this difference might be owing to the octroi rates being higher in one place than in another, and not to any extravagant expenditure on establishments in one town, as compared with another. He remembered fixing the octroi rate in a town of which he had been Magistrate—Firózpúr, in the Panjáb—on all commodities at a quarter per cent. Everywhere, the rates were low at the commencement, but afterwards they were raised in many places, he believed, to one or even two per cent. If the rate were only a quarter per cent., it was probable that the actual cost of collection would be very little less than if the rate were two per cent., though the percentages of cost on the amounts collected would of course exhibit a very great difference. He knew nothing of the particular rates in force in the towns in the North-Western Provinces into which the octroi had been introduced; he merely offered this as a possible explanation, derived from his own experience in the Panjáb, of the great apparent difference in the cost of collecting the octroi in the different towns in the North-Western Provinces. It might be that the Municipal Commissioners of the town of Secundra Rao, to which His Excellency the Commmander-in-Chief especially referred on account of the apparently excessive cost of collection—thirty-three per cent.—far from mismanaging, had deserved well of their fellow townsmen, by keeping the taxation within reasonable limits, and in not raising money to be spent on merely ornamental works.

The further consideration of the Bill was then postponed.

The Council adjourned till the 14th March 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA,
The 13th March 1868.

Office Supdt. Govt. Printing.—No. 2061 L. C.—19-3-68.—180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 20th March 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

MUNICIPAL COMMITTEES' (N. W. P.) BILL.

The Hon'ble MR. BRANDRETH moved that the consideration of the Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces, and for other purposes, be resumed. He said that, before asking the Council to pass the Bill, he would move the amendments of which he had given notice. The first amendment was that the following words be added to the sixth section:—

"Every member so appointed shall have the same powers and be subject to the same liabilities and vacate his office and be eligible for re-appointment as if he had been originally appointed a member under the first clause of this section."

The amendment was not one of a substantive character, and he did not suppose that any objection would be made to it.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH then moved the following addition to section 10:—

"The Commissioner of the Division shall be entitled to make such suggestions for the consideration of the Committee as he may deem fit; and the Committee shall furnish him, so far as may be practicable, with any information he may call for connected with the duties imposed upon them by this Act."

The amendment arose out of a suggestion of the Lieutenant Governor of the North-Western Provinces, who was not satisfied with the section as it stood, as he thought it would have the effect of making the Commissioner of the Division the mere channel of communication between the Municipal Committee and the Government. The amendment did not appear to be a departure in any respect from any of the principles of the Bill, and MR. BRANDRETH trusted that the Council would not object to give effect to the proposal of the Lieutenant Governor.

The Hon'ble MR. MAINE said that, strictly speaking, the first part of the amendment should not find its place in a legislative enactment, for the duty thereby created was one of imperfect obligation, since the Committee, though bound to receive communications from the Commissioner, was not bound to attend to them. Nevertheless, the opinion of the North-West Government seemed to be that, unless there were some such provision, the Committees might interpret the law as designedly excluding the Commissioner's right to interfere. The amendment would do no harm so far as regarded the first part of it. But MR. MAINE would suggest that, from the second part, his Hon'ble friend should omit the words "so far as may be practicable." If the Committee could not furnish the Commissioner with the information called for, the maxim *lex neminem cogit ad impossibilia* would apply, and they would be excused.

The Hon'ble MR. BRANDRETH having agreed to the omission of the words "so far as may be practicable,"

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY said he wished, with His Excellency the President's permission, not to propose the amendment of which he had given notice. He did so, not because he had changed his opinion, but because he was satisfied that the object he had in view would be gained otherwise.

The amendment was withdrawn.

The Hon'ble MR. BRANDRETH then moved that the Bill be passed.

The Motion was put and agreed to.

MILITARY COURTS OF REQUESTS' BILL.

The Hon'ble MR. MAINE introduced the Bill to empower the Governor General of India in Council to suspend the operation of section 17 of Act XI of 1841 (for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company) in such places as he shall by notification declare, and moved that it be referred to a Select Committee with instructions to report in a week. He said that, as he did not wish to stand in the way of the more important discussion which was coming on, he would not repeat his explanation of the legal difficulty which created the necessity for this Bill. But he would repeat the pledge which he gave upon the authority of His Excellency in Council, that the section would not be suspended unless there was an opportunity of creating a system of civil justice superior to that which would be superseded. What the new system would be would depend on the circumstances of different cantonments beyond the limits of British India. But perhaps, as a typical system, they might take that established by a gentleman now a Member of Council (Sir Richard Temple) in the great cantonment of Secunderabad. There was the Small Cause Court Judge exercising jurisdiction up to the highest level permitted by Act XI of 1865,—Rs. 1,000. Above him was the Cantonment Magistrate (in this case, a gentleman very carefully selected), who was invested with the powers of Civil and District Judge, and above him was the Resident, who was the Court of Appeal. His Hon'ble friend, Sir Richard Temple, was present, and would state, if necessary, that the system had given the greatest satisfaction. It might occur to the Council to ask how decrees of such a Court would be enforced in British India? This Court would be established, not only under the authority of the Native Chief, but also under that of the Governor General in Council, and would therefore be a Court within the meaning of sections 284 *et seq.* of the Code of Civil Procedure. Conversely, there would be no difficulty in such Court's enforcing the decrees of corresponding Courts in British India. There would be, in this case, no impediments to the operation of that quasi comity of jurisdiction which His Excellency had sedulously attempted to establish between the British Indian Courts and the Courts of Native States.

The Motion was put and agreed to.

CERTIFICATE BILL.

The Right Hon'ble MR. MASSEY said: "I have to introduce the Bill of which I gave notice last Saturday, for taxing professions, occupations, and trades, which is founded on the provisions of the License Tax Act, but

which, I trust, will be found free from some of the objections which have been urged against the existing law. I will explain the difference between the present Bill and the Act which I propose to repeal. The license tax is assessed at a maximum of 2 per cent., which by the operation of the scale falls below 1 per cent. Under the Bill, the maximum will be 1·6 or rather over 1½ per cent., and the variations will not be so considerable. An objection has been also urged against the existing law on the ground of the inequality of the scales. It has been said that the transition from one scale to another is too abrupt, and that incomes of a high class are rated in the same scale as incomes of a much lower class. We have partially remedied that objection. Class 4 of the present law applies to incomes ranging from Rs. 1,000 to Rs. 5,000, and we have established an intermediate point of transition. We have divided this class into two parts, and have fixed upon Rs. 2,500 as the resting point between Rs. 1,000 and Rs. 5,000. We have also added two other classes to meet an objection that the scale did not ascend high enough. Sir, I do not attach great importance to this objection, but I have extended the classes from Rs. 25,000, the point at which they terminate under the present law, up to Rs. 1,00,000, so that, in the very few cases in which profits are estimated at Rs. 1,00,000, the tax will be of £160. A profession or trade, the profits of which are estimated at £5,000 or Rs. 50,000, will have to pay £80. Class 3 is unaltered. But the most important change we have made is the omission of the lowest class. That class comprehended four-fifths of the tax-payers. The effect of removing that class altogether from the Bill is, that we get rid of the greater part of the persons who are assessed under the existing law. The number of persons who have as yet paid license tax is 556,230. By removing altogether this last class from the Bill, the number of tax-payers will be reduced to 116,000 persons. Now, Sir, I am far from saying that the numerous class thus relieved is a class entitled to entire immunity from a tax of this character. But when we consider how very wide a door is opened for oppression or malversation when an arbitrary tax is to be collected from a multitude of poor and ignorant people, I am disposed to think the Council will not consider the sacrifice we have made—it amounts to £160,000—too great. Another hardship which has been alleged against the present law is, that the tax was demanded in one payment. We have divided the payment into two parts, one-half to be paid at the time the certificate is taken out, and the other at the end of six months. And if it should suit the convenience of the payer to pay the whole of the tax in one sum, we give a discount of 2½ per cent., (which is equivalent to 5 per cent. per annum) upon the half-year's instalment paid by anticipation. Then, we have had to deal with salaries. The only ground upon which a graduated scale can be justified is, that it gets rid

of the difficulties and objections attendant upon an assessment on returns to be furnished by the tax-payer, and we think that the numerous irregularities which may be charged against a graduated scale shrink into nothing when compared with the annoyance to which persons are subjected by compelling them to disclose their private affairs. But that argument does not apply to incomes which are ascertainable. Now, Sir, we have included the Civil Services in the Bill. There can be no question whatever that the Civil Services are just as much professions as any other profession which may be subjected to this tax. But inasmuch as the profits of this class are fixed and certain, we have assessed them at one per cent., which is equivalent to the mean incidence of the tax on other professions. Military Officers are placed upon a similar footing. The 1 per cent. is to be deducted from the salary-bill, and as soon as the officer ceases to hold his appointment, or departs from the country, the payment will cease; so that, as regards the exaction from such officers of the whole sum to be paid at one time, the services will have no cause of complaint whatever.

Under the new Bill, public companies are not assessed as they were under the Act. Under the Act they were assessed on the amount of paid-up capital; but as that has been found to work unsatisfactorily, we have proposed that every company whose principal place of business is in British India, should be taxed 1 per cent. upon its declared dividend for the year. Companies which have no place of business in India, but have only an office for the transaction of agency business, are to pay a sum of Rs. 500.

There is one other point I have to mention. Under the existing law, persons who contribute to municipal taxation of a similar character, are entitled to deduct the amount which they contribute to the municipality from that which they are required to pay to the State. But, considering that the tax is lowered, and that municipal taxation is of a varying character, we have thought fit to withdraw that exception. It is undoubtedly a relief if the municipality collects its local rates by means of a license-tax; but if they are collected in the form of house-rates, or carriage-rates, or octrois, the municipal tax-payers experience no relief by the arrangement.

Now, Sir, it will be said that this tax is in principle an income tax. Well, I have not the least objection to face that charge—if it is to be a charge. We have considered the various modes of assessing professions and trades, and we have found none so rational, none so defensible in principle, none so easy of collection. We have purposely departed, however, from the strict principle of

an income tax. We have distributed professions and trades into a certain limited number of classes; we have assessed each class as equitably as we could; and we trust that, considering the light incidence of the tax, the public will, as a rule, be satisfied with the decision of the collector (which will no doubt be tempered by discretion and moderation) and will not think it worth while to dispute the assessments. But, at the same time, the tax-payer is not precluded from disputing it. It is competent to him to do so through the medium of appeal. I do not apprehend from experience of the existing law that that privilege will be much resorted to. We may be confident that the discretion of the collector, and his knowledge of the district where he has to collect the tax, will be such as to obviate, on the whole, the necessity of any appeal against his assessments. I mentioned the other day that the appeals have been very few indeed under the existing law. If the appeals have been rare under the existing law, I apprehend they will be still fewer under the amended Bill which I have now the honour to introduce. I wish it to be understood that, when this Bill is in Committee, I shall listen with deference to any objections which may be made to the arrangement of the schedule, and if it can be made to appear that a better arrangement can be made without the risk of diminishing the proceeds which I expect to derive, I for one shall be very ready to discuss the advisability of an alteration of the scale. As at present advised, I do not apprehend that the schedule can be very materially altered without deranging the whole machinery of the law, but, at the same time, that is a question which I wish to consider in Committee. Now, Sir, I have said that this tax has been very much objected to on account of its inequality; and the objections that have been raised might lead one to suppose that I had by some perverse ingenuity invented a mode of taxation which was to tax the poor at the expense of the rich. Well, Sir, I am bound to say that taxes of this description have existed in England for a very long space of time. I need only refer to one particular tax by way of illustration, which has long been in operation in England, and which has some resemblance to the law which is about to be repealed. I allude to Brewers' Licenses. Nothing can be more unequal in its incidence than that tax. The humble brewer who brews 20 barrels of beer is taxed at the rate of 6½*d.* per barrel, while such firms as Meux or Bass, or any of those leviathan brewers who amass large fortunes from the profits of their trade, are taxed at the rate of a halfpenny or a farthing per barrel. This inequality was partially redressed when the hop duties were repealed five or six years ago. Mr. Gladstone, when he was forced to deal with the hop duties, cast about to see if he could find an equivalent for the tax he was about to lose. He directed his attention to the brewers, and he found out that the brewers were not entitled to the relief which they were about to derive from the repeal of the

hop duties, and that, so far as they were concerned, the hop duties might be assessed upon them in a different form. Not less than two pounds of hops are used to every barrel of beer, and the duty on two pounds of hops was 3*d*. Mr. Gladstone therefore added to the Brewers' License the amount of the hop duty. By this arrangement, the Chancellor of the Exchequer obviated many objections to the tax, and he indemnified himself to a certain extent for the loss of revenue which he sustained by the repeal of the hop duties. But if it had not been for the repeal of the hop duties, it is probable that the anomalies of the Brewers' tax would have remained unredressed to the present day.

If you go down the list of excise licenses, you will find that inequality pervades the system more or less. It is impossible to do more than mitigate that inequality. There is one particular duty, however, not an excise duty, to which I will call your attention for a moment. That is the probate duty, which is essentially a property tax. Now, Sir, that tax is assessed on a graduated scale, and, in order that its assessment may be as equal as possible, it is divided into as many as 18 classes, so as to mitigate any unequal pressure upon the poor in favour of the rich. I will just state two or three results of that arrangement. A property of the value of £100 pays 2 per cent.; a property worth £200 pays 1 per cent; a property worth £600 pays 2½ per cent.; a property worth £1,500 pays 2 per cent.; and one of £3,000 pays 1½ per cent.; and so, if you ascend the scale, you find this adjustment to be in defiance of all principles of equity, and yet it has been adjusted with the greatest possible care. It has been frequently a subject of criticism, but no finance minister has yet attempted to revise it. Well, I merely give this instance, not as justifying an unequal tax in India, but as showing that, as far as the Government were concerned, they were not ignorant and reckless in the imposition of this tax, but that the worst they had done was to follow too closely English precedent. Having determined that a tax of this description was a very suitable tax for the purposes of Indian Finance, they endeavoured to make it as equitable as circumstances at the time would admit. Experience has pointed out to us that that adjustment was capable of improvement, and we have endeavoured, as I have explained, to remedy the defects in the present Bill. I trust, therefore, that the Bill will receive a liberal reception from the Council, and that they will not attempt to press me with objections which it is impossible for me to answer, and which can only be answered by saying that the tax is a light one, and that it is founded on principles which are acknowledged in the fiscal system of almost every civilized country.

Sir, I understand that an Hon'ble Member (Mr. Skinner), whom I see opposite, is about to propose that the existing law should be repealed, and that

this Bill should be rejected. Well, Sir, if I am rightly informed, my Hon'ble friend will be making a motion which is tantamount to a want of confidence in the Government. It is a motion of that character which, if made in England, and if successful, would have only one result. The constitution of the Government of India does not admit of that result; but I must say that, so far as that member of Council is concerned who is primarily responsible for the Budget, such an effect must take place. It would be a matter of very little consequence were I to anticipate my severance from the Government of India by a few weeks. But, although I shall not presume to use this as an argument to deter the Council from considering the proposal of my Hon'ble friend, I must claim for myself the same adherence to my views which I willingly accord to him and his supporters, and therefore, if it should be the pleasure of the Council to say that this Bill shall be rejected, and that the existing Act shall be repealed, the effect will be that the Budget must be reconstructed; and I must at once tell the Council that I cannot be a party to that reconstruction. I shall not embarrass the counsels of my colleagues by remaining a member of the Government while that process is going on, and I shall leave my successor to meet the views of the Hon'ble Member opposite. But if I know anything of my Hon'ble friend who is destined to occupy my post, which he will doubtless fill with great ability, I am inclined to think that he will find as much difficulty in meeting these views as I do. I must, therefore, most respectfully warn the Council against following the advice which my Hon'ble friend (Mr. Skinner) is about to tender; I shall presently have the advantage of hearing what he has to urge in support of the course which he is about to pursue; and in doing which he will, I may tell him, be assuming a very grave responsibility. I have no doubt he will be able to support that course with reasons and arguments of suitable cogency. I shall have the benefit of hearing what these reasons are; and with the permission of your Excellency, I shall have another opportunity of addressing you. I have now to move that the Bill be referred to a Select Committee, with instructions to report in a week.

The Hon'ble Mr. Minchin said that, in accordance with the permission that was granted by His Excellency at the close of the Right Hon'ble Minister's statement on Saturday last, that the discussion to-day was not to be confined to the Bill now before the Council, but might embrace the whole subject of the Budget, he (Mr. Minchin) did not propose on this occasion to speak chiefly on the Bill which had now been brought forward, but he took this occasion, when the whole finances of the country were under review, to speak on a subject which, in his opinion, was of vital importance to the welfare of the community. He alluded to the stamp revenue, on which he might have no other opportunity of pressing his views upon this Council.

It was with great gratification that he had listened to the clear exposition of the state of the finances, and of our financial policy, which was given by the Right Hon'ble gentleman. Since he had shown by his whole career in India that he cared little for public clamour, it was possible that he might now care as little for the fleeting tribute of popular applause. But in his retirement from this field of labour, he would carry with him the approbation of all thoughtful men, in that he had steadily avoided all attempts at great strokes of finance; in that he had endeavoured, as far as possible, to avoid the imposition of new taxes upon the people of this country, and more especially in this, that he had not set himself to attempt the solution of that impossible problem, the special taxation of the rich. In India, as in all countries, it was to the masses of the people that a Financier must look for the most prolific sources of public revenue; and in India, it was more especially to the masses that our Government was favourable, and to them consequently it could fairly look for their share of that pecuniary support which it required. To the English Government of India might be applied the old lines of Horace—

Addis cornua pauperi
Post te neque iratos trementi
Regum apices neque militum arma—

and in return for this rude plenty, and this security from armed oppression, the Government could fairly claim in return from the poor their due portion of taxation. The excise and the salt tax were paid almost entirely by the poor, and brought to the State a revenue of more than eight millions, an amount that could not be collected from the rich without absolute confiscation. Acknowledging, as he did, that we must look chiefly to indirect taxation of the poor for the surest sources of the public wealth, there was a time when he thought the poor man should not be subjected to taxation, and that was when he was wronged or oppressed, and sought for redress from his English rulers. Yet that was the very time when, under the present provisions of our Stamp Law, he was called upon for a direct contribution to the State.

The remarks of his Right Hon'ble friend, Mr. Massey, on the subject of the recent revision of the Stamp Law, was the only part of his speech to which Mr. Minchin listened with regret. He spoke of it, he might say, with exultation, as a great financial success, to which he was indebted for four hundred thousand pounds. His remarks on this subject reminded one irresistibly of the story of the old Roman Emperor, who, when his son respectfully objected to the unsavoury source of one of his fiscal exactions, replied, as he handled the coin, that the money had no smell. The remarks of the

Right Hon'ble Minister upon this financial success were of the true 'non olet' character. But was it a financial success? He accepted the Right Hon'ble gentleman's statement that this revision of the Stamp Law had brought into the Treasury four hundred thousand pounds. But if they looked into the way in which this gain had been achieved, when they found that the majority of the Committee on whose recommendation the responsibility for this revision rested—he said the majority, for in this Committee of Bengal gentlemen legislating for the whole empire, there were some who were on the side of justice and moderation,—when they found the majority of this Committee, who doubtless expected that their measure would produce a diminution in the number of suits, for they appeared to have imagined that it would get rid of all false and vexatious ones,—when we found them calculating on an additional revenue to the State of six hundred and fifty thousand pounds, and that increase was found in reality to have dwindled down to four, we might be sure that the diminution in the number of suits must be very great indeed. He thought he should not be found far wrong in estimating that diminution at twenty-five per cent. In that case we had made a profit of twenty per cent. on transactions diminished one quarter. In ordinary commercial affairs, this would be an excellent stroke of business, but when we considered that the article, of which we had sold less and for which we had charged more, was presumed to be justice, he did not think this was a matter for unmixed congratulation.

He knew that that subject was under consideration, and had been referred to good hands, but he could not forego the only opportunity which would be offered to him of exposing the grievous evils which he believed recent legislation on this subject had caused, and which were, of course, not anticipated, and in considering them he should refer chiefly to the circumstances of his own Presidency.

Our present Stamp Law weighed with peculiar severity on two classes, the rich, or, he should rather say, those who had contingent claims to great wealth, and the very poor. With reference to the first class, our old Stamp Law was very moderate: there was a limit to the amount of the initiatory fee, which could in no case exceed two hundred pounds. At present this initiatory fee was practically without limit. He had heard the facts of a case which had occurred in Calcutta since he had been here within the last few months. A suit was brought forward for the inheritance of a valuable property. He did not speak with technical precision, but he was correct as to the facts. The suit was dismissed on a point of fact, not law; namely, that a certain person, through

whom the claimants inherited their right, was found not to be in existence, and that his right had not devolved in the way that was claimed. That person was in existence, and was desirous to come forward and give the necessary right, but the case could not be re-opened without the payment of a second initiatory fee of eight thousand pounds, which the parties could not afford to pay. He thought that no one could assert that this was not a clear case of denial of justice by the action of the new Stamp Law.

He knew of another case in the Courts at Burmah, where an unfortunate suitor paid twelve hundred and fifty pounds as an initiatory fee, and his suit was at once rejected on the ground of no jurisdiction. It might be said that it was his fault to employ a lawyer who would allow him to go up on such grounds, and incur so serious a loss: but he was no less deserving of our commiseration as a victim of the Stamp Law. He need not repeat cases, of which the like could be brought forward by any one in practice in our Courts. He was not a quixotic opponent of all taxes on justice, as they were called. He quite admitted the necessity of suitors paying their quota for the expenses of the Courts; but he thought they should be charged in moderation, and that this system of initiatory fees should be abolished, which acted often as an absolute denial of justice, and some system, perhaps of charging on the decree, be introduced in its place.

But in order to make the Courts in some degree self-supporting, there could be no reason for charging fees upon criminal complaints. On looking at the items in the Budget, he found in the receipts, under the head of Law and Justice, an item in the current year of upwards of seven hundred thousand pounds, which was swelled in the coming year to upwards of a million. He was unaware of the reason of this increase, as he could conceive no receipts from Law and Justice, except the fines, which in so large a majority of criminal cases were levied from one or other party. Surely this legitimate revenue should suffice towards the expenses of the Criminal Courts, without requiring payment for a stamp on all criminal complaints. As a Madras Magistrate, and one who had served for twenty-two years in the Provinces in that Presidency, he could state that this practice was there so complete a novelty, and so contrary to the whole traditions of his official life, that, passed as that measure was during his absence from India, on his return to the country he could hardly believe that it was a fact; and on making himself acquainted with the history of the question, he could understand the strenuous, but unfortunately fruitless opposition which had been made in the last Session by his Honourable friend Mr. Shaw Stewart of Bombay.

The stamp required on *all* ordinary petitions would, in Madras, have struck at the root of our whole system of administration, had it not been got rid of by a side-wind. The Government there had passed an order ruling that all petitions connected with the land revenue should come under the exemption for petitions relating to matters connected with a Settlement, pending its formation. Such an order was absolutely necessary for the due transaction of the revenue work in that Presidency, unless it were intended to employ the revenue officers solely as machines for collecting eight-anna stamps. But it was not right that a difficulty of that kind should be got over by the invention of a legal fiction. The only honest way was to remove this objectionable feature by repeal.

In the Madras Presidency, the stamps imposed on criminal proceedings was as great an evil, yet he heard with dismay that there were many Magistrates even there, who said that it worked well, by putting a stop to false and vaxatious complaints. With respect to the imposition of a stamp putting a stop to false complaints, if every other Magistrate were of that opinion, he would not alter his, but, like the poor lunatic in the asylum, he should be compelled to think that all the world was mad. He could not always place implicit faith in official opinion. If he might use the homely simile employed on a like occasion by the late Duke of Wellington, he thought we often found the pack joining in with the leading hound. He had heard many such official cries. He remembered a clever man starting a theory in Madras that it was advisable to reduce small ryots to their proper position of day-labourers, and within six months every other official paper into which one looked contained the doctrine that it was advisable to reduce small ryots to their true position. In weighing official opinion on the result of legislation, you could not be certain how far such opinion was not the echo of anticipatory comment in this Chamber. You were told that the imposition of a stamp on criminal proceedings would put a stop to false complaints, and he would not be surprised to hear it stated that such had been the result. If so, the action of the Stamp Law must possess the virtue inherent in Ithuriel's spear:

> "for no falsehood could endure
> Touch of celestial temper, but of force
> Returns to its own likeness."

The false and vexatious complainant, when brought under the influence of the Stamp Law,

> "starts up
> Detected and abashed,"

and the files of our Courts were free from those false and vexatious complaints !

He would believe that the Stamp Law stopped false complaints as much as it stopped all, but nothing more. He believed that it stopped many, and some might be of grievous wrong. Hon'ble gentlemen might think that he was making too great a case out of the demand for payment of one rupee; but there were many to whom one rupee represented the result of several days' labour, who could not afford to pay even one rupee to obtain redress for wrong. The result of the Stamp Act amongst such classes must be to produce a spirit of lawlessness. In Bengal you have zamíndárs, and here aggrieved parties could and did apply to them. But in the Madras and Bombay Presidencies, there was no one between the people and the Government authorities: there, if they could not pay the stamp, they could obtain no redress, and were driven to have recourse to the wild justice of revenge. With the spirit thus engendered amongst these classes, it was only the might of the English power which held them back altogether from—

> The simple rule, the good old plan,
> That he shall take who has the power,
> And he shall keep who can.

He turned now to the action of the present Stamp Law on suits for the recovery of land. In the Madras Presidency every ryot, in addition to his own land, for which he paid rent to Government, cultivated land, the private property of others, which he rented on lease, or by the year. He might say without exaggeration that they never gave up land in their possession without a reference to the Courts. The Magistrate was of course powerless to interfere, the party in actual possession could only be turned out, either by the owner of the land, or a new tenant on behalf of the owner, through a civil suit. Now in such suits, under the old law, the amount of stamp to be demanded was calculated by valuing the land at its assessment for one year. Under the present law, the land was valued at eight or ten times the assessment as the case might be. Now, in these cases the real ownership of the land was never in dispute; the suit was always for possession only, and under the present law the stamp was so excessive as to put a bar to such suits. It cost more to turn out the party who was in possession than the thing was worth. He had no doubt that, in that way, the Stamp Law was deteriorating to an extraordinary extent the value of that Inám property, which was created by his Hon'ble friend Mr. Taylor's labours. His Excellency was doubtless aware that the extent of Inám land in the Madras Presidency was enormous, nearly equal in extent

to the Government land under cultivation. It was hardly ever cultivated by the proprietor, but was rented, as he had stated above, by the ryots in addition to their own lands. But on these Ináms the Stamp Law worked with a curiously unequal effect. As explained to the Council on a former occasion by Mr. Taylor, these Ináms had been charged with a quit-rent of one-eighth, one-quarter, or one-half the assessment, according to the goodness of the title. As in suits for possession they were now valued at ten times the amount of the quit-rent, the curious result followed that the amount of Stamp was charged in inverse proportion to the real value of the Inám: the less their value, the greater was the stamp-duty charged.

All suits for the possession of land should bear a very moderate stamp. No nice questions of law or fact were ever involved; the machinery of our Courts was called into play, merely on account of the tenacity with which the Native agriculturist clung to any land on which he had once laid his clutch.

He had now gone through what seemed to him the worst evils of the present Stamp Law, and which he thought pleaded loudly for its correction. On the occasion of the last revision, the time was most unfortunate for a fair consideration of this matter. There was then a serious deficit, and it was necessary to raise money in any way. But the times had entirely changed since his Hon'ble friend Mr. Shaw Stewart made his determined but hopeless resistance to that revision of the Stamp Law the evils of which he now deplored. Owing to the prudence and practical skill of the Right Hon'ble Financial Minister, they had now, he hoped, entered on an era of financial prosperity. There was a surplus in the current year of eight hundred thousand pounds, and an estimated surplus in the coming year of one million five hundred thousand. He felt confident that the Government, if it saw that evils it did not anticipate had followed on any of its acts, would never refuse the remedy. He felt deeply his own responsibility in bringing forward a question of such vital importance to the people at large. He would that its advocacy had rested in abler hands. For he spoke in behalf of the poor and the oppressed throughout this vast Empire. To His Excellency with confidence he made that appeal. To His Excellency who, throughout his career, had lived up to the highest traditions of our order, and was known especially as the poor man's friend. The constitution of this country was, and must be, a despotism, but it was a despotism tempered, until this recent unfortunate legislation, by the right of free petition. MR. MINCHIN would urge His Excellency to remove this blot from our administration before the close of his rule, and to restore the priceless boon of untaxed justice to the poor.

The Hon'ble MR. SKINNER said that it was with considerable diffidence that he asked the Council to follow him over the ground traversed with so much ability by his Right Hon'ble friend on Saturday last, and he must claim the indulgence of Hon'ble Members while he proceeded with the remarks that had occurred to him in connection with the Right Hon'ble Member's statement.

From one point of view, that statement must be considered to be highly satisfactory. That was in the practical indications which it contained of the buoyancy and expansive nature of the revenue; but there was another point from which it seemed to him to present a somewhat different aspect, that was in the sense in which it treated of the disposal of that revenue.

They had been told that the current year which expired this month was expected to wind up with a surplus of £800,000, which represented, however, not a surplus of income over expenditure, but the unexpended balance of last year's loans, and it was estimated that, with the aid of this sum, the revenues of 1868-69 would suffice for the whole service for that year.

Setting apart, however, the charge in each year for extraordinary Public Works of a reproductive character, which were to be defrayed out of the current revenue, instead of being debited, as they were led to think that they would, and as, in his opinion, they should be, to capital account, the two years showed respectively a surplus in 1867-68 of £1,700,000, and in 1868-69 of more than £2,000,000.

Hon'ble Members would bear in mind, too, and this was an important point, that these surpluses were obtained after debiting the cost of ordinary Public Works, amounting in each year to nearly £3,500,000. In addition to this, it appeared that £2,000,000 had been advanced to Bombay on the security of the Land Fund, of which £7,000,000 had been repaid, leaving a balance of £1,300,000, and deducting from this the million sterling that had been borrowed for these Bombay advances, there remained a sum of £300,000, which was apparently also charged against the revenue of 1867-68; notwithstanding that, as the Right Hon'ble gentleman informed them, security was held against these advances, which was estimated at a value of from £4,000,000 to £8,000,000. Then there was the loan to the municipality, which was expenditure also of a reproductive character, which amounted, he believed, to between 18 to 20 lákhs, and which, as far as he could make out, was likewise charged against the revenue. The surplus of 1867-68 allowed, moreover, for an excess in the expenditure in England of more than half a million, which included, he presumed, the cost of that wonderful Ball, which was said to have been given in London

for the benefit of India. He inferred, also, that account had been taken at the same time of that equally singular demand on this country, for a contribution to the expenses of the Abyssinian invasion, as well as of the Government losses in connection with the old Bank of Bombay. These were charges no doubt very unpleasant to bear, but he was afraid they were such as could not be thrown off to posterity, and he assumed that the Right Hon'ble Member would have provided for them before he proceeded to lay the present generation under contribution for expenses from which their descendants alone would derive benefit.

After these liberal contributions to the revenues of the year, and after the assurance given last year by the Right Hon'ble gentleman, that a distinction would thenceforth be observed between the means for meeting ordinary expenditure and that for defraying the cost of reproductive works, well might the tax-paying public exclaim when it found the use to which the proceeds of its taxation was applied; and yet, in the presence of these surpluses, the Right Hon'ble gentleman ventured to alarm the public mind by references to fresh schemes of taxation!

The Right Hon'ble gentleman had not clearly explained, or possibly he (Mr. SKINNER) had failed to understand, the grounds on which the Government thus suddenly proposed to reverse, or, as the Right Hon'ble Member said, to suspend, the policy, the announcement of which last year gave such general satisfaction, and the soundness of which the Right Hon'ble Member still admitted, the policy, namely, of imposing on future generations only, burdens the benefits from which fell mainly to them.

It was surely not from any fear of adding to a public debt, which was so light that it amounted to hardly more than two years of a revenue derived from the most moderate assessment that was borne by any country in the world. He should say that, apart altogether from the present favourable state of the money market, now, if ever, was the time for the Government to borrow, whilst its credit was good by reason of this light assessment, as well as of the additional security it offered in the shape of the enormous reserve which these large public works constituted, even if there were no other guarantee for its solvency.

The Right Hon'ble Member said that the policy he had referred to was one that should be resorted to only when the ordinary income of the year was sufficient to defray the whole charge of works, such as those in question. But this principle would open up a prospect of indefinite taxation, every plan of which might be tried to provide the surpluses that would exclude the necessity for borrowing, and then, where was the line to be drawn between ordinary

and extraordinary sources of income, if such a tax as the license tax was to be admitted within it?

After all, the effect of this tax in both years under notice was simply to swell a surplus that was used in expenditure in which neither year was interested, and on that ground alone, it might well be spared.

But was the tax necessary, even for the purpose to which the Right Hon'ble gentleman proposed to apply it? The Right Hon'ble Member spoke with marked emphasis and with excellent reason of the growing tendency of the revenue; and, with regard to his estimates for the coming year, there appeared certainly no reason to suppose that the surplus had been overstated. The Right Hon'ble Member had indeed suggested more than one source from which an increase of income might be expected, and to take one of them only, if Opium did not reach the same figure next year that it had attained this, and which would of itself be almost sufficient to cover the loss of the license tax, it might safely be reckoned on to produce, beyond the estimate, a very large portion of what that tax was expected to yield. Indeed, speaking as he did of an article with the trade in which he had been intimately connected for some years past, he felt so confident on the subject that he would undertake to bring forward men of standing and substance in this city, who would be ready and able to contract for the whole year's supply, at the figure taken by the Right Hon'ble Member, and he should be very glad to be one of the number, sanguine as he should be of a large profit on the transaction.

But even if it were expedient that the revenues of the country should be applied, in the manner to which he had objected, for meeting the cost of works of a reproductive character, he would ask if it was generous to the public, or even politic, to provide part of this revenue by means of a tax which was generally understood as of a nature to be reserved only for cases of financial emergency, which, however much you might seek to improve it, could never be otherwise than unfair in its incidence, and which was in fact only one degree less obnoxious than another measure of direct taxation which, in its application to this country, the Right Hon'ble gentleman had himself characterized as hateful.

He had no wish in any degree to embarrass the Government, but he thought he was justified in calling on the Right Hon'ble Member to redeem the pledge he last year gave.

Before concluding, MR. SKINNER had to express his acknowledgments to His Excellency for the ready sanction accorded to the request he made for leave to bring in a Bill to repeal the existing License Acts. He took that course with

the view of facilitating the plan of action he had proposed to himself in reference to the Bill now before the Council; but another mode of procedure had since been suggested to him, which he had adopted as simpler and more practical, for attaining his end, which was at once to repeal the existing Acts, and to throw out the Bill introduced in their stead. The rules of the Council obliged him to defer to another sitting the motion he desired to make with this view.

The Hon'ble MR. SHAW STEWART said that his Right Hon'ble friend had declared that he was prepared for the charge that the tax which would be imposed under the Bill he had that day introduced was nothing less than an income tax, and it would therefore doubtless be gratifying to him to know that there was at least one Member of this Council who was of opinion that the license tax came far short of the income tax. As he listened the other day to his Right Hon'ble friend's Financial Statement, he hoped against hope that he would announce that the Government of India had determined to revert to the policy of his great predecessor, the late Mr. James Wilson, and reimpose the income tax on the principle of the Act of 1861. He had very good authority for saying, and he believed no one acquainted with the circumstances of the case would dispute, that it was never intended by Mr. Wilson that the entire income tax should cease after five years, or that the Act should come to an end. The Government of India promised that the major portion of the tax, the three per cent. levy, should cease after five years, or as soon as the finances admitted of it, and it was intended that the rate should be liable to fluctuation according to the demands of the time. But the rate of one per cent., the proceeds of which were to be spent for reproductive public works, was intended to be permanent, so that the machinery for assessing and collecting the tax might be retained in working order, ready to be called into use when wanted. If the Right Hon'ble gentleman had determined to impose an income tax on the principle of the Act of 1861, he might have depended on his entire and cordial support. He (MR. SHAW STEWART) could not help thinking that the Government of India would be in a stronger position if it had such a financial engine as an income tax at its command. It was very well to say that, in these times of peace, the tax was unnecessary; but at any time war might break out, or large and sudden demands might be made on the Government for money; how satisfactory then to have the power of at once raising the necessary funds without the delay and opposition inseparable from a newly imposed Tax. The one per cent. fund for reproductive Public Works yielded, he believed, upwards of £100,000 a year while the income tax Act was in operation. Had this been retained, could not those works have been proceeded with, without

borrowing and without the necessity of the paltry license taxes of last year and of this year which had caused such irritation?

If the income tax were in operation to its full extent, they might have had a surplus this year without having to take credit for that most perilous form of revenue, the increase on Judicial Stamps. The Right Hon'ble gentleman took credit for the Stamp Act of last year having been a financial success. He had little to add to his Hon'ble friend Mr. Minchin's eloquent remarks on this subject, but he might suggest that it was not difficult to make the sale of any sorts of goods a financial success at any price, when the seller had not only a monopoly of the sale, but was sure of a demand being compulsory. But the measure, if to be defended at all, must be defended on the grounds that there was an excessive amount of litigation in India, and that it was desirable to check this litigation by increasing the stamp-duty. He very much doubted if the proportion of litigation to the population of India was in excess of, or even equal to, that of the civilized countries of Europe. He had been trying to get trustworthy information on the subject, and had not succeeded in getting any that he could lay before the Council; but he had strong reason for suspecting that there were more lawsuits in a year in England, in proportion to the population, than there were in India. He would suggest that some enquiries should be instituted by the Government of India with the object of ascertaining this important preliminary point. But even if it were admitted for argument's sake that it was desirable to check litigation in India, he would ask if it was by a fine that pressed heavily on all alike that they ought to attempt it. For his own part, he would say that they might reasonably do all they could to diminish litigation by giving the people a good system of education, and by giving them good laws, but not by increasing the stamp-duty, which he had every reason for believing to press very heavily on the population generally, and to be felt as a burden scarcely tolerable. It might be stated as one cause of the comparatively little interest with which this subject was regarded in the presidency towns, that there was an uniform fee of only ten rupees on all suits in the original side of the High Court of Calcutta, and also, he believed, of Bombay and Madras; whereas, in the Courts not established by Royal Charter, and in the High Court on its appellate side, the rate of duty mounted, as stated by his Hon'ble friend, *ad infinitum*. Mr. Massey had stated that the duty of revising the Stamp Act had been entrusted to a Member of this Council. He had the highest opinion of the Hon'ble Member's ability and fitness for the task; but remembering that he was a Bengal Civilian, he would venture to express a hope that he would bear in mind the fact that Bengal was not India, and that Madras and Bombay should be consulted more fully than they were before.

While on the subject of stamps, he would remind his Right Hon'ble friend of his promise to answer the question which suggested itself to him during his speech on Saturday, namely, the causes to which the great increase of £300,000 in receipts under the head of Law and Justice were to be attributed; and he would at the same time beg him to be so good as afford any explanation of the following difficulty. There was an increase of £300,000 in the general receipts from Law and Justice, and a special increase of £400,000 in the receipts from stamp-duty, attributable, he believed, to the increase of stamp-duty on judicial proceedings; or, in all, there was an increase of £700,000 in Judicial receipts. Looking to the side of expenditure, he found that the budget estimate for 1867-68, under Law and Justice, was £2,841,803; and for 1868-69, £2,857,580, or an increase of only £16,000. Looking to the admitted necessity of reforming our Law Courts, especially the subordinate Judges and Court Establishments, he would ask if only £16,000 out of this immense increase of £700,000 was to be devoted to the work of putting our Judicial Establishments on a proper footing, and the remainder, or £684,000, swallowed up in the general revenues. He could not suppose that this would be considered a satisfactory result of the revision of the stamp-duty.

He must take upon himself to express his entire concurrence in the Right Hon'ble gentleman's views on the subject of the salt tax. He was very glad indeed that there was no intention of increasing the rate of taxation in Bombay and Madras. It had been urged that the incidence of the salt tax on the population of Bengal was heavier than in the rest of India; and this appeared to be the case, as the population of Bengal was stated to pay about thirteen pence, and that of Bombay and Madras only eight pence. But if the land-revenue were taken into consideration, it would be found that Bengal, instead of being first in the list, stood fourth, as regarded the pressure per head of the combined taxes on land and salt, and that Madras and Bombay, instead of being third and fourth, held the second and first places respectively. That was a point of view that seemed to corroborate the Right Hon'ble gentleman's conclusions as to the necessity of avoiding an increase of the pressure of the salt tax in the other Presidencies.

He had very few remarks to make on the subject of the license tax. The only general objection to it that he had was that it was not an income tax. He must apologise to the Right Hon'ble gentleman for asking so many questions; but there were two more which he trusted he would be so good as answer. The first was whether the license tax was to be made over to the Local Governments. It would be in the recollection of the Council that, in

his Financial Statement of last year, the Right Hon'ble gentleman said that the Government of India did not propose that the tax should appertain permanently to the imperial revenue, and intended to transfer it, with a corresponding amount of local charges, to the Local Governments. The Right Hon'ble gentleman observed that these local charges formed the most unsatisfactory part of the budget; that the Government of India could exercise no control over them and knew nothing about them, and that they must either comply implicitly with the demands of the Local Governments, or take the responsibility of disallowing them, in either case running the risk of doing mischief. The Government of India, therefore, according to the Right Hon'ble gentleman's statement, desired that the Local Governments should in future determine their own expenditure as regarded local objects, and provide themselves the ways and means. The Right Hon'ble gentleman had not referred in his present statement to this subject, the importance of which was perhaps best known to those who, like himself, had served for long under a Local Government. The second point on which he would ask the Right Hon'ble gentleman to enlighten the Council was the reason for adding, in the present Bill, the word "occupations" to the words "professions and trades." The words of the Bill of the last year were held to exclude the important classes of fundholders, landholders, and those who lived on the rents of house-property, none of these being professions or trades properly so called. Had the word 'occupations' been inserted so as to include all or any of these classes?

The Hon'ble MR. STRACHEY said: "Whether, Sir, the Hon'ble Mr. Skinner, who has just declared his almost total disapproval of the policy of the Government, agree or not in the views which I am about to express, he will, I think, concur with me in considering that there is a very extraordinary difference of opinion regarding the real present position of our finances. The Hon'ble Member appears to consider that we have now a surplus revenue to deal with. Others say that there is an actual deficit. It certainly seems very strange that it should be possible to draw such different conclusions from the same figures. Although I think that my Right Hon'ble friend Mr. Massey explained very clearly the true state of the case, so complete a misapprehension of our actual financial position seems to be common, that I think it right to endeavour to remove some part of this misunderstanding, and to endeavour to explain wha these figures really mean.

I believe that, in exhibiting the account of the year in the manner done in this Budget Statement, the Financial Department has only obeyed the orders of the Secretary of State; but the consequences have been unfortunate. The present

confused ideas of the state of the accounts has arisen mainly from the fact that, under the heading "Public Works Extraordinary," two very different classes of works have been mixed up together, reproductive and non-reproductive works. The result has been, not only that the true state of our finances has been obscured, but that the idea has arisen, upon which the Hon'ble Mr. Skinner has founded serious objections, that the Government is now proposing to reverse the policy which last year gave such satisfaction, and that it is now about to pay for reproductive public works out of income instead of out of capital. Now there is in fact no foundation whatever for this idea.. The Government is, in reality, strictly adhering to the policy which it has always maintained and acted upon. I will endeavour to explain the principle on which the Government of India and the Home Government have proceeded in dealing with these two great classes of public works.

With regard to reproductive public works, which consist mainly of great works of irrigation, but partly of the special works which are being carried out at Bombay on advances made by the Imperial Government, the principle to be followed was explained very clearly by my Right Hon'ble friend in his Financial Statement last year. He said that even if the twenty or thirty millions of money which will be required for irrigation works should yield no return, the State would still be bound by the highest sense of duty to undertake them. He also said "we can no longer be dependent on the resources from which irrigation works have hitherto been supplied. Our surplus years are few and far between, and our cash-balances are not more than sufficient for the ordinary demands of the public service. We have resolved, therefore, with the hearty approval of the Secretary of State, who has enjoined the Government to spare no means for the furtherance of this great object, to make special provision for this branch of public works. From henceforth, therefore, the estimate for irrigation works will be removed from current account to debt; in other words, the annual charge for the construction of canals, reservoirs and other works of this class will be provided for by loans, and the interest of these loans only will be charged to the expenditure of the year."

These are the principles from which the Government has never deviated. I do not mean to say that, if we should be so fortunate in any year as to have a large available surplus, on which there are no other legitimate calls, that we might not properly devote that surplus to works of irrigation. It would, of course, be foolish to borrow unnecessarily. But, practically, this question is one that has never arisen, nor is it likely to arise. We may consider that, under present circumstances, the rule is that for great reproductive works we are always to borrow.

With regard to non-reproductive public works, of which the great example is the Barracks, which are estimated to cost more than £10,000,000, a different principle has been laid down by the Indian and Home Governments. The discussion regarding the manner in which these great charges ought to be met began in 1865, when the Government of India wrote to the Secretary of State that they considered that as large a proportion as possible of the annual charge for these works ought to be defrayed from the annual revenue, and that the remainder should be raised by loan. In reply to this letter the Secretary of State observed that there was no doubt that expenditure of this kind ought to be provided for, if possible, out of the revenue of the current year; "but," he said, "if at any time the amount of expenditure which it would be expedient to incur cannot be drawn from the ordinary income of the year, it must be left to the Government of India to determine, in communication with the Home Government, in what manner the requirements of the public service shall be met." The same subject was referred to, in the debate on the Financial Statement for 1865-66. It was referred to in particular, by His Excellency the Commander-in-Chief, who, after observing that it might be said that such permanent structures as these barracks might be charged against Capital instead of Revenue, in the manner adopted by Parliament in case of the fortifications in England, went on to say—"It was resolved by my Right Hon'ble friend, and I think with great propriety, that the course adopted by Parliament in the case of the fortifications should not be followed in this country with respect to the barracks. His reason was that he saw that, nowithstanding the vastness of the projects for military buildings, it would not do to encumber with loans on such account the market which might have to meet the demands of another great cause of expenditure of a reproductive character." Again, in my Right Hon'ble friend Mr. Massey's Financial Statement of last year, after referring to the great irrigation works in the terms that I have already quoted, he went on to speak of the military works as follows:—"I should have preferred to go on as hitherto, defraying this charge, special and temporary as it is, out of the revenues of India. If a financier were to lay down any precise rule of separation between ordinary and extraordinary charge, there is scarcely a year in which he might not have a plausible pretence for transferring charge from Revenue to Capital account. I do not know how long such a process might go on, but sure I am that it would end sooner or later in a collapse of public credit." He went on to say that, notwithstanding the truth of this principle, it would not be right, considering that he had already had to propose new taxation, still further to increase that taxation on account of the new barracks. He said "we shall

fulfil our duty if we provide all that we can out of revenues and throw a part of the burden on our successors. We shall borrow a million towards the construction of barracks in the ensuing year, and even after this million has been borrowed, the remaining million will be charged to the revenues of the year."

These, Sir, are the principles upon which it has always been considered that these two great classes of public works are to be dealt with. It comes to this, that for reproductive public works we may always borrow, while for non-reproductive works we are never to borrow unless our existing income is insufficient. Rather than impose new and burdensome taxation, we may borrow to meet a portion of the charges on account of this class of non-reproductive works. These principles, which have been consistently acted upon by the Government of India, may be, I think, defended on better grounds than past practice and the orders of the Secretary of State. They appear to me to be clearly founded on reason. The truth is that these so-called extraordinary public works, (and I am now putting aside altogether the class of great reproductive works,) are only extraordinary on account of their magnitude, and of the difficulty in at all times providing for them out of ordinary revenue. In no other sense are they extraordinary. If, indeed, there were a probability or a possibility that when these barracks are completed we should see a great diminution of our public works expenditure, the case would be different. For my part, I should even then say that we ought not to borrow without necessity, but I admit that much might be said on the other side. But I believe it to be certain that, long before these barracks are finished expenditure for public works that may be reckoned by millions will have become inevitable. The same causes which have led to this great expenditure on barracks, causes connected with the maintenance of the health of the army, will inevitably continue to lead to immense further expenditure. As His Excellency the Commander-in-Chief stated with great truth, in the debate on last year's Budget, there is now sitting permanently in England a Sanitary Commission which may be called a Committee of Public Safety for supervising the health, not only of the British troops in India, but of the subjects of Her Majesty throughout this country. As His Excellency observed, this has greatly increased the difficulties of the Minister of Finance. When these sanitary authorities declare certain measures to be necessary for the health of the army, an irresistible pressure is brought upon the Government. And it is, no doubt, right that it should be so, for even on grounds of economy alone, if there were no better grounds, no expenditure, however great, can be wrongly incurred if it tends to maintain the health of the British soldiers. I believe, therefore, that even for military works an enormous

additional charge may be anticipated. But, as His Excellency Sir W. Mansfield remarked, the sanitary authorities supervise not only the health of the army, but that of the people generally. I saw the other day a good example of this, though I must explain that the proposal of which I am about to speak did not come from the Royal Sanitary Commission. We are now threatened with a complete revolution in our system of jail management. We are told, that unless we adopt the so-called cellular system which has been adopted in the best jails in England, no proper prison discipline or reformation, or any thing else that we ought to have, is possible. It has been calculated that the cost of carrying out these projects would not be less than twelve millions sterling. When I think of all that has to be done in India for the honest part of the community, how roads and railways and canals have to be made, how the people have to be educated and ten thousand works of improvement to be carried out, it seems to me monstrous that we should have to discuss these schemes which I can only characterise as schemes of silly sentimentality. But I cannot disguise from myself the fact that these projects threaten us with an enormous expenditure, and even if we dismiss such foolish extravagancies, there can be no doubt that a great expenditure is really necessary before our jails in many parts of India will be placed in a satisfactory condition.

But without continuing to dilate on expenditure which may be called hypothetical, I will give the Council some idea of the demands that are actually made for public works on the Government of India. I take the demands for a single year, 1868-69. The Imperial Public Works Grant to Bengal, excluding expenditure on railways, was £1,065,000. After this grant had been made, His Honour the Lieutenant Governor sent to the Government of India a statement of works of a purely civil character which it had been found impossible to include in the Budget, owing to insufficiency of funds. His Honour said that, although he did not ask that the amount entered in this statement should be immediately granted to him, because he admitted the difficulty in providing the funds, he thought it necessary to give to the Government of India some indication of the works which must be undertaken ere long, and nearly all of which, he stated, were works which, in the interest of good administration or for the reasonable comfort of the servants of the State, or for the material progress of the country, it was very desirable should be executed. The estimated cost of these works amounted to £300,000. They consisted of roads and bridges, public buildings in Calcutta, hospitals, court-houses, jails, sub-divisional buildings, and lock-ups. "The question," His Honour said, "which constantly comes up is not whether there is necessity for works of this description, but which of the applications is most pressing? The necessity for improved jail accommodation is also very

pressing as a mere question of humanity. This is well known to the Government of India. Sub-divisional buildings being indispensable for the efficient working of the system of administration approved of by the Government of India, no remark regarding their necessity seems called for, except that the system cannot work well unless the officers are properly housed, and that, with the amount of funds at present available, it will take years before the system can be introduced."

I take now the case of Bombay. In this Presidency £1,595,000 was assigned for public works. Of this sum, £489,000 was on account of military works. The actual requirements of the Government of Bombay for new works were stated to be £2,673,000. Deducting from the imperial grant the amount allotted for repairs, establishments &c., the amount required by Bombay exceeds that which was assigned to it by £1,750,000. The Bombay Government stated that all of these works, which could not be included in the Budget for want of funds, were more or less of a pressing nature; that they were not only necessary works for the development and improvement of the country, but that very many of them were indispensably necessary for the proper administration of the Government. Thus these two Provinces alone of Bengal and Bombay, which received for the ensuing year £2,655,000, demanded in addition to that sum a further amount of £2,050,000. The same sort of story might be told of each Province of the Empire, and I have no doubt that all these demands of the Local Governments were in themselves quite reasonable. The truth is that there is no limit to such demands, because there is no limit to the requirements of the country. I believe, therefore, that we shall greatly deceive ourselves if we expect that any one in this Council, or indeed any one now alive, will, if the Government continues to do its duty, see any diminution in the expenditure on public works in India.

It seems, then, to me clear that these military works have no better claim to be considered extraordinary than many others which we shall have to undertake. If it be right in the one case to meet the whole charge by borrowing, it must be equally right in the other. But, as my Right Hon'ble friend said in the passage already quoted, such a policy must inevitably end sooner or later in a collapse of public credit. The only safe and honest principle is that which we have been following—to bear our own burdens so far as we are able, and to leave our successors to bear their own.

Assuming then these principles, which, I repeat, the Government of India has consistently acted upon, what do the figures of this budget-sheet show? Let us take first the current year 1867-68. Setting aside

reproductive public works, the charge for which has to be met by loan, the expenditure of the year is £48,467,000, the income is £48,258,000, leaving an actual deficit of £208,000. But the Secretary of State early in the year sanctioned a loan of £1,000,000. It turned out that this was more than was wanted by £800,000. This sum constitutes the so-called surplus of the year. Although the Hon'ble Mr. Skinner spoke in one part of his speech of this sum as being in reality only the balance of a loan, he appeared to me in another part of his speech to speak of it as a real surplus, and this last idea is at any rate one that seems very prevalent. The truth is that, in the sense of excess of income over expenditure, there is no surplus. There is merely the balance of an unexpended loan. And if we had had no license tax, the deficit, instead of being £200,000, would have been £866,000. Applying the same principles to the estimates of the ensuing year we have an income of £48,586,000, and an expenditure of £48,358,000. There is an estimated surplus of £228,000, and this is a real surplus of income over expenditure. If, however, we were now to abandon the license tax and substitute nothing in its place, this surplus of £228,000 would be converted into a deficit of £340,000.

Turning to the charges for reproductive works, we have to provide for the coming year £1,270,000. This sum, in accordance with the principle which has been explained has all to be met by loan. The Hon'ble Mr. Skinner complained that we were reversing the great policy which had given such satisfaction and were now proposing to pay for reproductive works out of Income. We are doing nothing of the kind, we are not proposing to spend one farthing out of Income on reproductive works : the whole cost will be met from money raised by loan. The reason why no fresh loan is now wanted is simple. Besides the loan of £1,000,000 of which I have already spoken, we borrowed in India £1,400,000. Of this latter sum we spent on reproductive works only £850,000. There remains, therefore, of this loan, an unexpended balance of £550,000. Adding this to the £800,000 unspent of the English loan, we have a total of £1,350,000 unexpended balances raised by loan, and we do not borrow again now simply because we have borrowed already.

It would be easy to swell to any extent that we like the estimated surplus of the ensuing year, by assuming that my Right Hon'ble friend Mr. Massey has under-estimated his receipts. This is a sort of criticism that we have every year. But judging by past experience, it oftener happens that the Financial Minister rather under-estimates his expenditure than his receipts. I think that my Right Hon'ble friend has said quite enough already in defence of his estimates. The chief doubts that have been expressed are as

usual about opium. The remarks which the Hon'ble Mr. Skinner has made upon this subject deserve to be received with the utmost respect, for there can hardly be higher authority than his own on such a point. Still I cannot but think that the estimate is a wise one, and I am fortified in this belief by some remarks that I lately came across by a gentleman who is unconnected with the Government, but is one of the greatest authorities upon such subjects now living. "I have before me," he writes, "in detail, the market prices and quantities of opium sold in Calcutta during the past 20 years, and I find that the extreme fluctuation per chest is not less than between Rs. 628 and Rs. 2,576. When it is borne in mind that, from 30,000 to 40,000 chests are disposed of annually, and that a fifth to a sixth part of the whole revenue of India is chiefly derived from opium, planted, in-gathered with the usual elemental risks, and ultimately sold for and on account of Government, this circumstance of itself ought to leave no room for the repeated surprise expressed by English critics that the Indian Budgets should be out by a whole million."

Accepting the figures shown in the Estimates, would it be wise to abandon any portion of our existing revenue? It seems to me, unless, indeed, we should change our whole policy, and determine to pay for non-reproductive works exclusively by loan, the inevitable result would be that at the end of the coming year we should have to meet a deficit. If, as I have said, we were to abandon the license tax we should have a deficit of £ 340,000. It must be remembered that the present question is not whether we shall impose new taxation, or meet the charges for public works by loan, but whether, having sufficient income to meet these charges, we are deliberately to throw a portion of that income away and borrow to supply the loss. But suppose that I am wrong in thinking that it would be most unwise to diminish our existing revenue, and admit that we ought to reduce taxation and abandon the policy which has hitherto been followed, why are we to pick out this particular tax for abandonment? In the whole list of our taxes there is perhaps no tax that I should be so sorry to give up as this. I have said, before I became a Member of this Council, as hard things about the details of this license tax as perhaps any one has said. But I have always felt that, whatever might be the faults of this measure in detail, it was a recognition of the great and sound principle, that all considerations of justice and expediency require that a portion of the burdens of the State should be met by direct taxation on those classes which have paid hitherto little or nothing, but which benefit more than any other classes from a strong and civilized Government. If I wished to make an attack

on the existing sources of our revenue, I certainly should not pick out this insignificant scrap of direct taxation. I think that I could make out a much better case against some of our other taxes. I might for instance doubt whether our customs' tariff might not be amended, whether our export duties are justifiable, and some of our import duties, too. I might doubt the wisdom of making the producers of sugar in the North-West Provinces pay a transit-duty of from 12 to 15 lákhs of Rupees a year on their sugar passing from one part of India to another. I might doubt the propriety of the enormous taxes which we now levy on the administration of justice, of which we have heard so much to-day. And last, not least, there is no end to what might be said about the duties on salt. I think for my part that no terms of reprobation can well be too strong for the existing system. To me, I confess, it is past understanding how any person knowing the truth can deliberately say, that £6,000,000 now paid by the poorest classes ought to be increased with the object of saving from direct taxation to the extent of one per cent. on their incomes the 120,000 persons on whom the amended license tax would fall. I am far from saying that we ought hastily to diminish the Salt duties. I think it would be very foolish to tamper rashly with this great source of revenue. But I have no doubt that the true policy is that which has been enunciated by my Right Hon'ble friend—that we are not to try to snatch a few lákhs of Rupees here and there, but to view this great question as a whole, and endeavour to bring about a more equal standard of duties throughout India. I believe that the Right Hon'ble gentleman's anticipations will be verified, and that, while we may expect from this policy an increase of revenue, we may bring about at the same time a decrease in the cost of salt in the greater part of India. I believe that, at any rate in that part of India which I know best—the North-West Provinces and Oudh—this result might be confidently looked for. I am satisfied that the people there do not at present obtain one-half of the salt that they require, and I believe that, under a wiser system, we might expect a great increase of consumption and of revenue too.

To return to the license tax—I repeat that I am satisfied that this tax is excellent in principle, and if it be modified in the way now proposed, it will be levied without difficulty or objection. If this tax be open to reproach, it is not, I think, that it goes too far, but that it does not go far enough. My Right Hon'ble friend, Mr. Massey, has given his reasons for preferring this tax to an income tax, which should fall upon all classes. It is not necessary to enter into this question, because it is not probable that any actual demand will be made upon the Government to replace this tax by an income tax. I shall say nothing regarding the details of the Bill before us, because all details can be much better discussed in Committee in the first instance at least.

I should have thought it, Sir, unnecessary to say any thing more, had not the Hon'ble Mr. Skinner repeated what we so often hear that unpopular direct taxation, whether an income tax or a tax of the kind proposed in this Bill, ought to be reserved for times of public emergency. For my part, I confess that I doubt whether direct taxation, if it be moderate in amount and confined to the comparatively rich, and be carefully and justly administered, ought to be called unpopular at all. I think it indeed an abuse of terms to talk of a tax being unpopular which affects only 120,000 persons out of a population of 180,000,000. If we could arrive at true popular opinion, we should surely find this tax actually popular, inasmuch as it falls only upon the comparatively rich, and does not touch the mass of the people. But let it be admitted that I am wrong in this, and that direct taxation is as unpopular as it is the custom to assert;—and of course I cannot deny that this tax is unpopular with the most influential part of the community upon whom alone it falls,—then I say, so far from this unpopularity being a reason for not imposing such taxation in time of peace, it is the strongest possible reason for doing so. I think that it is generally admitted that, if any great public emergency were to arise, direct taxation could hardly be avoided. But such times are the last times for introducing new experiments in taxation. Your Excellency has shown in a manner which seems to me unanswerable, that in this matter there is no analogy whatever between the circumstances of England and of India. In England, when emergency arises, we know that we may confidently appeal to the patriotism of a united people. The time of greatest difficulty is the time when the people are most ready to respond to the demands that are made upon them. But as your Excellency has observed, the case in India is very different. Whatever view we may take of the popularity of our Government we must admit that the affection of the people—if I may use such a term—is at best very lukewarm, nor towards a Government of foreigners could it be otherwise. While the stability of our power appears unquestionable, the people obey without a murmur, but if difficulties arise and doubt becomes possible regarding the permanence of our power, then is the time for the thousand elements of discontent and hostility to gather strength. Such time, I repeat, is the last time for any new experiments in taxation. Let us by all means keep our direct taxation as low as the actual requirements of the State allow; but if such taxation be necessary in time of emergency, we may depend upon it that the wise course is to accustom the people to it in time of peace."

The Hon'ble Mr. Maine said that, when he came down to the Council, he had no intention of mixing in what he expected to be a wholly financial discussion, to which he was sure his Hon'ble friend Mr. Strachey, and his Right Hon'ble friend (Mr. Massey) at his side, would do more than justice. But after

the speeches of his Hon'ble friends Messrs. Minchin and Shaw Stewart, it was almost impossible for him to keep silent. MR. MAINE did not, however, intervene because he acknowledged any special responsibility in respect of the increase of judicial stamps under the Act of last year. There was certainly a sense in which every member of this or the Executive Council was responsible for every measure which became law. But there was also a sense in which less responsibility never attached to the Government than in respect of the recent increase of the stamp-duty. It was not true (and MR. MAINE said this more emphatically because the contrary assertion was found in the papers which had been received) that the measure had originated in a spontaneous attempt of the Government of India to recruit its finances. It had been pressed on the Government of India, MR. MAINE thought, by more than one Local Government, but certainly by that of the Panjáb, which no doubt acted under the influence of a gentleman who had devoted much time and thought to this special subject. Year after year Mr. Roberts, the present Resident at Hyderabad, and late Financial Commissioner of the Panjáb, had urged on the Government of India that the existing scale of judicial stamps was utterly capricious, that it favoured one description of litigant at the expense of another, and that, by adhering to it, Government sacrificed a considerable source of revenue. But, almost importunate as Mr. Roberts' representations became, it was possible that he would not have been listened to, but for the results of an enquiry conducted by MR. MAINE's Hon'ble friend Mr. Strachey, under the instructions of the Government of India. Mr. Strachey was requested to report on the condition of the subordinate judicial officers. His report was to the effect, that their pay was such that the commonest honesty could not be expected from them. The Government of India became conscious that it was matter of urgent necessity to place them above temptation, and it occurred to it that an opportunity had come for ascertaining whether any weight was to be attached to Mr. Roberts' representations, and whether, if justice were rendered probably better, and almost certainly more incorrupt, a slight additional charge might not be levied on the classes which resorted to the Courts. The Government, however, did not act at once; but in the early part of 1866 it appointed a Commission, at the head of which was a gentleman on whose judicial capacity it would be impertinent for MR. MAINE to enlarge, but whose judicial experience was certainly most extensive, Mr. Justice Louis Jackson. With him was associated Mr. Justice Hobhouse, with whom they were all acquainted, and two successive Legal Remembrancers, his Hon'ble friend Mr. Cockerell and Mr. Prinsep. These gentlemen sat during the hot weather and rainy season of 1866, and collected and digested information from all parts of the country. At the beginning of the cold weather, they were joined by the

Additional Members of this Council, who came from the various provinces of India, and who acted as their Assessors. All these gentlemen unanimously agreed that the new scale was not beyond that which the litigant could fairly be expected to pay, though MR. MAINE believed that, on one point, his Hon'ble friend Mr. Shaw Stewart dissented. The Bill which became Act XXVI of 1867 merely gave effect to the recommendations of this Committee, by whom every single argument now urged against any part of the new duties had been distinctly considered and overruled. With all deference to his Hon'ble friends, MR. MAINE did not think that the authority of the Committee was yet overweighed by anything in the scanty and contradictory information which had yet been received. Mr. Minchin admitted that, even in his own Presidency, he was the one sane man in the lunatic asylum, the one reasonable juryman who was always associated with the eleven who were entirely unreasonable, and that most of the other members of his service were agreed that the Act did no harm. Still, MR. MAINE joined frankly in the assurance given by his Right Hon'ble friend Mr. Massey, that whatever suggestions were received should be carefully weighed and scrupulously attended to, and that, if it appeared that the scale of stamps was in any degree oppressive, a Bill to modify it would be introduced without undue delay.

There were two classes of stamps with which his Hon'ble friends appeared to have a special quarrel, and on which it was necessary to observe specially. Mr. Minchin objected to the stamp-fee on petitions addressed to executive officers, and he had defined the Government of India as a despotism limited by the right of petition. Now, MR. MAINE really did not see that despotism had much to do with the question; for he understood that these petitions had reference to private interests, as to which the old doctrine still held good, that it did not matter half a crown to a man under what form of government he lived. If, however, despotism must enter into the definition, the Government of India might be defined as a despotism limited by the incapacity of its officers to do more than a certain amount of work. The case which had been laid before the Government was, that its executive officers were inundated with multitudes of petitions on foolish or trivial subjects, and they found themselves placed in the alternative, either of not reading the petitions, or of placing some check on their presentation. The check devised was the levy of a small fee, which was in effect an addition to the price of the paper on which the petition was tendered. In this way the petitioner was forced to think before he wrote. MR. MAINE'S own very limited experience certainly led him to think that there was common sense in the expedient. Nobody charged with the legislative business of the Government of India would ever fail to receive a crowd of letters contain-

ing suggestions, remonstrances and objections relating to legislation generally or to Bills before the Council. MR. MAINE's own conviction was, that nothing saved him from a perfectly overwhelming correspondence, except the practice of the Natives of India, not simply to pay the postage on letters which they thought important, but to register them also, in order that they might certainly arrive at their destination. It was to be recollected, that no price was put on oral complaints, and the complainant might still get audience of the officer. If the fee on petitions pressed too harshly—and this was a point to be investigated like the others—MR. MAINE was of opinion that the appropriate remedy would be to increase the facilities for approach to the executive functionary of the Government.

Now then, as to the stamp on complaints addressed to the Criminal Courts, which appeared to excite so much indignation in the Bombay Presidency, and in the mind of his Hon'ble friend Mr. Shaw Stewart. If ever there was a subject on which it was idle to repeat the ordinary commonplaces as to the denial of justice (they might not be commonplaces as Mr. Minchin had put them, but they were the common and current opinions), it was this. MR. MAINE must recall to the Council the extraordinary and appalling fact which had been brought home to the Stamp Committee by its investigations in 1866. Bengal Proper was the great litigating province in British India, and it was established that the result of taking the stamp off complaints in criminal cases was that, of 177,000 persons charged with offences in the single year 1864, 105,000 were never brought to trial, and more than half the rest were acquitted. Mr. Justice Hobhouse had explained to the Council last year how these 105,000 cases never came to be tried. There was a quarrrel in the village. An angry villager went to the Court, paid one of the persons hanging about there a few pice to write a complaint, in which the name of his bitterest enemy was put down as defendant to a criminal charge, while the persons whom he hated with an only moderate hatred were named as witnesses. The defendant and the witnesses were thereupon summoned by the Police; the complainant never appeared, and the charge was dismissed. But the defendant and the witnesses went home, having lost two or three days' work, and labouring for life under the discredit (which it was honourable to the Bengálís to consider a discredit) of having been brought up before the Court on a criminal accusation. It was true that things did not seem to be quite so bad in other parts of India; but, after all, the great difference between the Bengálís and the Natives of the rest of India was, that they were more quickwitted, and MR. MAINE suspected that the secret of the difference was that it had not been discovered in the other provinces to what use the Courts might be put. But the fact

was established that, in the province in which resort to the Courts was most diffused, out of every hundred criminal charges made, seventy-five were false, and fifty were malicious. The Courts in fact were, in one great province actually, and in others potentially, an engine of cruel oppression. Now let the Council suppose that, apart from any financial emergency, the question was before it how to deal with the state of things he had described. It was the undoubted duty of the Government to keep Courts open for the redress of wrong. But it was also the duty of Government to shield its subjects from the deep injury of false and malicious accusation. If the two duties conflicted (and MR. MAINE trusted that this was a practical, as much as it was a theoretical, paradox), he was not sure that it would not be better to close the Courts, and thus stop the utter demoralization of which they were the source. But if a less extreme course were desirable, it might occur to a legislator fresh from Europe to adopt what practically was the French system, and to collect the materials of accusation entirely from the enquiries of our own officers. If, however; the Natives of India were to be taken as they were, and if the Police could not be used for this purpose, MR. MAINE was not sure that the system of the Stamp Act of 1867 was not as reasonable a one as could be devised. If a man came to the Court and merely wished to deposit a complaint in writing against his neighbour, a small fee was demanded from him as a guarantee of his seriousness. If, however, he was too poor to pay it, he went before the Magistrate and stated his grievance orally, and it was in the discretion of the Magistrate whether, in reducing the complaint to writing, he would demand the fee or not. The expedient might not be a good one; but it was for those who objected to it to suggest a better. In MR. MAINE's opinion it would be discreditable to the Council to abolish the stamp without at the same time finding a remedy for this monstrous evil of wholesale false accusation.

His Hon'ble friend Mr. Minchin had concluded by appealing to His Excellency for untaxed justice to the poor. The proposition implied in the appeal was one which had commended itself to persons who, without disparagement to Mr. Minchin, he might call more eminent than his Hon'ble friend. At a more convenient time, MR. MAINE would endeavour to point out what, in his judgment, was the fallacy that underlay all arguments against judicial taxation. In his own opinion, the taxes improperly called taxes on justice were fully as justifiable as any other taxes; but on the same conditions, namely, that they should not be either excessive or oppressive. He knew of no country in which there was no judicial taxation, and he was certain that the experience of every man in the room would bear him out in the

assertion, that if the theories of his Hon'ble friends were carried to their full practical consequences, and if the Natives of India, without paying an anna and at the expense of Government, were allowed to put the machinery of the Civil Courts in motion against every body they pleased, and in vindication of any alleged right they pleased, the only class of persons in the country to whom life would be tolerable would be those who had no property whatever in respect of which they could be sued. Thus, the excess of civilized justice would produce precisely the same results as the extremes of anarchy and barbarism.

The Hon'ble MR. SHAW STEWART craved His Excellency's permission to offer a word of explanation. His Hon'ble and learned friend had referred to his connection with the Committee on the Stamp Law that sat last autumn, and had stated that he (MR. SHAW STEWART) concurred in the recommendations of that Committee except in one particular. He begged to state that he did not concur in the opinions of the Committee for the increase of the stamp revenue. The Minute of His Excellency, which formed the basis of the consultations of the Committee, suggested an increase of fifteen lákhs to meet the increased cost of Judicial Establishments, and he was prepared to give the Committee his advice as to the best method of obtaining that increase; but when he found that the Committee had determined to recommend a scale which was estimated to yield an increase of sixty-eight lákhs, he lost no opportunity of expressing his disapproval. When, to his no small surprise, he found that the recommendations of the Committee were accepted by the Government of India, he urged these objections in every way that was open to him. He recorded a dissent to the report of the Select Committee of the Council to whom the Bill was referred, and he waited on His Excellency personally and on the Executive Council to urge his objections. MR. SHAW STEWART trusted that his Hon'ble and learned friend's remarks would not be understood to imply that in any way he (MR. SHAW STEWART) approved of the report of the Committee that sat during the autumn of 1866, or of the Stamp Law of last session.

The Hon'ble MR. MAINE had only to beg his Hon'ble friend's pardon for the inaccuracy of his recollection. The strength of his Hon'ble friend's opinions on one point had put out of MR. MAINE'S mind the views he had expressed on others.

The Hon'ble MR. CROOKE could not bring himself to support this Bill for taxing Professions, Occupations, and Trades, because, whilst realised property went free, precarious incomes were to bear this burden. The professional and commercial classes of Europeans had been pointed out as especial objects for increased taxation; but he would remind the Council that these classes were

here under peculiar disadvantages as to climate and expatriation, and that, to discourage them, was to prevent the resort of capital and intelligence to the country. The Native professional and commercial classes were also supposed to be lightly taxed; but MR. CROOKE thought that, as members of a community that paid the great land and opium taxes, they might be well let off cheaply in other respects. The official classes had been placed under a differential rate which, though not in reality unjust, appeared invidious, and would have been as well avoided. He was not perhaps expected to suggest a substitute for this tax; but if it were otherwise, he would certainly not recommend an increase of the salt tax, which he thought ought to be reduced as soon as practicable. He might say, however, that it had ocurred to him that an uniform moderate tax on all articles both of import and export would be preferable to the proposed measure.

The Hon'ble MR. COCKERELL said, at that late hour it was not his intention to detain the Council with any remarks on the general subject of the Bill before them. On matters of that kind, where the subject of legislation came before the Council, not only with the full authority of the Executive Government, but with the announcement that had been made by the Right Hon'ble Mr. Massey that day, the Members of the Council who, like himself, filled offices subordinate to the Government, were naturally, to a certain extent, precluded from adverting to the subject in terms of hostile criticism. He should, therefore, have refrained from making any remarks at all, but for the incidental circumtance that the Stamp Tax had elicited certain remarks from two Hon'ble Members. He referred to the statement attributing £400,000 increase of realizations over the amount realised last year. We had no certain statistics as to the operation of the Act during the entire period in which it had been in force. But in as far as we could judge from the tested results of the operation of the Act during the first four months after its introduction, and in so far as that could show the general result of the whole year, he was of opinion, that the entire amount realised from stamps on judicial proceedings did not exceed £1,100,000. Therefore, from the whole sum set down as income from stamps, no less than £1,300,000 was due to income derived from stamps used in the ordinary business transactions of the country, and was in no way whatever connected with the tax upon the administration of justice. If the accounts of the stamp revenue of several years be referred to, it would be seen that, with the exception of the three years during which there was a shortness of produce and a general consequent depression of the commercial transactions of the country, there had for a number of years been a progressive increase in the stamp revenue. And, therefore, although there was not a doubt that there

had been an increase last year, in the duty realized from stamps used in judicial proceedings, that increase had fallen very short of what was expected, and probably but little more than half the increase exhibited in the Budget under the head of stamp revenue was due to the Act of last year.

Another remark made by the Hon'ble Mr. Shaw Stewart was that the sum allowed for the improvement of the Courts of justice was out of all proportion to the sum obtained from the increased stamp revenue, and he had arrived at that conclusion by taking the entire increase of stamp revenue, adding that to the proceeds under the head of justice and treating the whole as income derived from these Courts; but of that revenue, as he (MR. COCKERELL) had shown, not so much as one-half could be regarded as the proceeds from stamps on judicial proceedings.

The Hon'ble RÁJÁ SHIORÁJ SINGH said that the zamíndárs or málguzárs and muáfidárs paid revenue and nazrána respectively. They were also liable to pay the dák cess and contributions on account of schools, dispensaries, and roads, and were liable to meet other similar contingent charges. When they were liable to such payments, it would be very hard on them to pay income tax.

The license tax should be levied on other persons, such as professional men and servants who were not liable to the above payments ; but professional men whose annual income did not exceed six hundred rupees should be exempted from the payment of the license tax, and servants whose monthly salary did not exceed one hundred rupees should be also exempted from the same.

The tax might be levied on the interest of Government promissory notes, the holders of which were not liable to pay the contributions, &c., to which he had referred.

HIS EXCELLENCY THE PRESIDENT said, before addressing himself to the main subject of the debate, he must do the Hon'ble Mr. Shaw Stewart the justice to say that, in HIS EXCELLENCY's judgment, he had been always seriously and earnestly opposed to the increase of the stamp duties. Last year, in Council and out of Council, he was very earnest on the subject, and denounced the propriety of increasing that taxation. During the present year, the Hon'ble Member had at various times renewed his efforts with the view of trying to induce HIS EXCELLENCY to have the tax reconsidered. HIS EXCELLENCY must say also, in common honesty, that he had an impression that, to some extent, they had done more than they ought to have done; that in some respects the new stamp duties were excessive and unreasonable, and that the law did press severely

on the poorer classes; and he was willing to admit the reasonableness of the Hon'ble Mr. Shaw Stewart's wish to have the question reconsidered. But after consulting with the Hon'ble Mr. Cockerell and hearing all he had to say, His Excellency became satisfied that they were not in a position to consider the question, and therefore, after discussing the matter in the Executive Council, they all agreed to postpone the consideration of it to the next year, while, in the meantime, the Hon'ble Mr. Cockerell should employ himself in getting together all obtainable information on the subject.

His Excellency would now turn to the consideration of the main subject—the question of the license tax; and here he might say that the Hon'ble Mr. Strachey had forestalled so much that he intended to say, and no doubt had said it so much better than His Excellency would have done, that he would only remark that Mr. Strachey, in his speech that day, had added to the many obligations under which His Excellency felt himself towards him. It seemed to him (The President) that no impartial or thoughtful person could have listened to the Hon'ble Member without admitting the force of his arguments; and further, His Excellency would say that, now that they were about to lose his Right Hon'ble friend Mr. Massey, he could unhesitatingly state that he felt to him a debt of gratitude for the part he had played in the question before the Council. That Hon'ble gentleman might have left them after gaining to himself a certain amount of ephemeral popularity. The noblest and most honest of men were not superior to such influences. But it was due to Mr. Massey that His Excellency should say that he resisted such a temptation; and that he had, with a spirit and resolution The President could not help admiring, weighed the circumstances and difficulties of our position in a way which demanded His Excellency's sincere gratitude.

His Excellency did not hesitate to say that it appeared to him that it would be a truly suicidal policy for the Government to give up any portion of their present taxation. It seemed to him that, by the concurrence of fortuitous circumstances, they had a certain sum in hand, consisting partly of the profits of opium, and partly of the unexpended proceeds of a loan. That money they would devote to meet the expenses of extraordinary and reproductive public works. It appeared to His Excellency that it would be little short of madness—with the uncertainty of the opium revenue in this country, with the certainty of a large and long-continued expenditure that must be incurred for a series of years—(His Excellency might say for a whole generation)—for the Government deliberately to forego any source of taxation which, though in some degree unpopular, could not be proved to be oppressive. It had been said, and

urged with considerable force, that the Government had deliberately engaged to borrow money for the great expenditure required on account of military barracks; that they had also bound themselves under all circumstances to borrow the money necessary for reproductive works; that they submitted that policy to the Secretary of State; and that the Secretary of State not only approved of that policy, but enjoined it on the Government with the force of an order. But that was literally opposed to the real facts. So far from enjoining the Government to borrow money for military works, the Secretary of State had directed that we should only borrow when we were unable to defray the expenditure out of the revenue. With regard to works of a reproductive character, the Secretary of State had given the Government a much larger margin of discretion; but he never meant to say that, if the Government had money in hand, they should give the money up, and borrow for the purpose of executing those works. It was His Excellency's pleasure as well as his duty to obey the Secretary of State in every reasonable order, but if there were any point on which His Excellency should be inclined to disobey the Secretary of State, it would be if he directed that, no matter what the circumstances might be, we must borrow. The Hon'ble Mr. Strachey had well said that no man could say when expenditure on account of extraordinary public works would stop. It appeared to His Excellency a perfect illusion to say that it would cease in four or five years. Such expenditure had been going on for the last twenty years, though not perhaps to such an extent as of late.

The Hon'ble gentleman had given specimens of the demands of the Bengal and Bombay Governments for expenditure, and His Excellency agreed with him in saying that he would be glad to give those Governments a great portion of the expenditure they asked for. But independently of the sources of expenditure brought together in the Budget, there was a perfect certainty that, during the course of the year, we should have to consider various other claims of the kind. His Excellency had jotted down in a corner of the sheet before him half a dozen words showing those matters on which large expenditure was certain to be required. The first was sanitary works. The Government had lately, under the authority of the Secretary of State, appointed Sanitary Commissioners to every province of Bengal Proper. What did that mean? It meant that the Commissioners would make enquiries and reports, and ask for expenditure for this and that purpose. Unless we acceded to their recommendations, what was the use of appointing Sanitary Commissioners? Then there was the subject of vernacular education, which had pressed on the Government. They had been taunted on all sides for not elaborating a system of vernacular

education for Bengal. That, again, meant very large expenditure. If the wealthy people of Bengal would only do their part; if they came forward in a liberal manner and made use of their influence in promoting education, HIS EXCELLENCY thought the Government of India might help them. That also would entail a large expenditure. Then there was the construction of provincial roads. He had heard the Hon'ble the Lieutenant Governor of Bengal more than once tell them, that the provincial roads which Sir John Grant devised, and to a certain extent carried out, were going to destruction for want of repairs, and that many of the roads which he devised had not even been begun, all of which was essential to the prosperity and welfare of Bengal. Where was the money to come from? The people should subscribe for such purposes, but the Government should assist. There was another item of expenditure not provided for. Then there was the question of Jails to which the Hon'ble Mr. Strachey had adverted; and in all that he had said on that point HIS EXCELLENCY entirely concurred. A large sum also on account of the Bombay Marine might be wanted. Experience had shown that it was a mistake making the large reductions in that Marine which had been effected. It was clear that, notwithstanding the Government had large Armies in India, thoroughly effective for the purposes for which they were required, nevertheless we had to keep up a large Police. And so, while we had English men-of-war on the seas, we wanted something of a local Marine to protect the shores of the country from pirates and robbers. Lastly, HIS EXCELLENCY thought we ought to have something like a Sinking Fund, so that we might gradually, as opportunity occurred, and when a surplus arose, make some impression on the great portion of the public debt during times of peace and plenty. People said that the debt of India, compared to its revenue and means, was very small, and drew analogies between the debt of India and the debts of countries in Europe. No doubt the debt of India, when making such comparisons, might appear to be small; but considering that they were a foreign Government, and bearing in mind that at any time, they were liable to a crisis from a change of circumstances, it would be a wise and far-seeing policy, that in times of peace they should in some degree endeavour to reduce the debt.

On the question of loans for reproductive works much might be said. On this side of India, whatever might be the case in Madras, it was an undoubted fact that irrigation works, though profitable and conducive to the well-being of the country, the comfort of the people, and the security of the revenue, did not make the large returns some people supposed they would. Indeed, it was not only the opinion of able Bengal Engineer Officers, but he would say from his own observation, that there were few irrigation works on

this side of India that would pay, if at all, in a large way under from seven to ten years. If that were the case, only reflect what a heavy debt we should incur by going on from year to year constructing a large number of works of that kind. HIS EXCELLENCY had no doubt that in time they would recoup themselves, but a great many years must elapse before that result could be attained; and it must also be remembered that for the first two or three years a considerable portion of the expenditure must be of a thoroughly unproductive character. Surveys, enquiries, and so forth would take up the time of many skilled officers, who must be paid liberally for their services. Therefore, while HIS EXCELLENCY would not hesitate to borrow, when necessary, for reproductive works, there was no sound reason, while we had money to devote to that kind of expenditure, that we should throw it away by reducing taxation.

HIS EXCELLENCY had no doubt that the Budget estimate had been honestly and fairly prepared. He was hopeful that the out-turn of the next year to which it referred would be satisfactory; but nevertheless they must calculate on some accidents and some chances, and it was quite possible that in some important items there might be a loss of revenue. HIS EXCELLENCY would first take up the land revenue. They knew that at the present time there was something like a drought in the Madras Presidency: Lord Napier had said distinctly that there would be a diminution of revenue to an amount of about thirty lákhs The Council had heard what the Hon'ble Mr. Minchin had said, that there ought to be a reduction in the income from stamps. Then, if you come to the other side of the Budget, it would be seen that a very moderate sum had been set down for barracks and irrigation works. HIS EXCELLENCY knew it for a fact that, while that moderate sum had been put down, and possibly no more would be spent, nevertheless a larger sum had been allotted for this purpose, and might be required. Then there was the question of the Cash Balances. By expending money in hand we should considerably reduce those balances, which now stood at something like eleven millions. If during the year it should appear that we were unduly drawing on those balances, it would then have to be considered whether we should not have to borrow for reproductive works, or even for barracks. When that question arose, HIS EXCELLENCY had no doubt that the Member of Government entrusted with the management of the finances would not hesitate, to make a readjustment of the Budget and borrow such amount as was necessary. But in the face of all that, in the face of the uncertainty of realising, even in the article of Opium, the full amount of revenue estimated, it seemed unwise and injudicious to give up any existing source of revenue, and certainly HIS EXCELLENCY was not in any degree in favour of giving up the license tax. HIS EXCELLENCY thought that, while all direct

taxation was undeniably obnoxious to the Natives, as it no doubt was to his own countrymen, still, considering the security obtained from our Government, both Europeans and Natives should share in the burdens of the State. There was another argument that struck him in favour of taxing the classes to whom the present Bill would apply. It was those classes who chiefly criticised the administration of the country; it was those classes on whom depended the outside opinion as to public expenditure; it was gentlemen of those classes who seemed to unite in urging on the Government schemes for what was considered public improvement. So long as those gentlemen did not in any degree, or in any appreciable degree, bear the burdens of the State, nothing was easier or pleasanter to them than to advocate all sorts of expenditure. His Excellency did not mean to say that they would advocate any thing not beneficial. But had the Government the means to undertake those improvements? Were they likely to be reproductive? If any gentleman in the House of Commons got up and proposed a large expenditure of the kind, he would be met by a hundred objections and criticisms, all originating in the feeling that if the scheme was not a profitable one, the cost would fall on the tax-payer. Every gentleman there was interested in keeping taxation as low as possible, and therefore would not lightly give his vote in favour of extravagant schemes. But the case was quite different here. All kinds of projects were coming up to the Government of India, not only in India, but even from England; and when the Government endeavoured to meet schemes of that kind, and endeavoured to show that a scheme was not profitable, or that the expenditure was otherwise not desirable, then our opposition was put down to hostility, or to meanness, or parsimony, or something of that kind. Now, if outside opinion would only help the Government in these matters, if the public would only fairly and kindly and liberally criticise these matters, and when they thought the Government right, would uphold it in reducing expenditure and repelling insidious attacks on the Treasury, they would help us very greatly, and enable us to do our duty."

The Right Hon'ble Mr. Massey said, that after the speeches of His Excellency the President and of his Hon'ble colleagues, it would be quite unnecessary for him (Mr. Massey) to enter into a lengthened statement in defence of the policy of the Government. He would therefore confine his remarks to those particulars to which attention had been drawn by the Hon'ble Messrs. Minchin, Skinner and Shaw Stewart. The Hon'ble Mr. Minchin had opened the debate by an attack on the revenue derived from the sale of judicial stamps, but as he (Mr. Massey) considered that the Hon'ble Mr. Maine had completely disposed of that question, he would only have a few words to say. Mr.

MASSEY could not agree that the principle of the stamp tax was objectionable, although he was prepared to satisfy reasonable remonstrances as to details. He had said on Saturday last that the scale was open to revision, and if the result should show that the existing adjustment had resulted, as was alleged, in a denial of justice, he would be the first to advocate the revision of the Act in a liberal spirit, and even to part with revenue if necessary. But on the information which we possessed, it would be premature at present to undertake that revision. The question involved was one of a considerable revenue, and though that revenue was not, as the Hon'ble Mr. Cockerell observed, yet developed, it was a revenue of an expanding character, and one which might form an important item in future Budgets. But it was not for that reason that MR. MASSEY would maintain, as a source of income, a tax objectionable in principle and oppressive in detail. He could assure his Hon'ble friend that the whole subject was open to revision, and if, in a full and impartial examination, it turned out that the scale had been hastily adjusted and interfered with the first right of a citizen—that, namely, of the unfettered administration of justice—a remedy would certainly be applied.

The Hon'ble Mr. Skinner, as MR. MASSEY had anticipated, had addressed his objections chiefly to the Certificate Tax. If he were to follow the Hon'ble Member in his remarks, MR. MASSEY would find himself involved in a debate on the principles of the Budget. He must therefore repeat that the tax was an integral part of our financial arrangements, and that the necessity of a reconstruction of the whole Budget would be entailed if the opposition of the Hon'ble Member were successful. MR. MASSEY could therefore hold out to the Hon'ble gentleman no prospect but one of unmitigated opposition to any attempt that he might hereafter make to throw out the present Bill. He trusted he could rely on the public spirit and good sense of the Council to support the Government in adhering to the arrangements they had made. It was not from any disrespect to his Hon'ble friend that he did not dwell farther on this subject at present: the question would come up for discussion in another stage if the Hon'ble Member adhered to his present intention, and it would then be his (MR. MASSEY'S) duty to defend the measure.

There were certain questions addressed to him by the Hon'ble Mr. Shaw Stewart. The first question that the Hon'ble Member had asked was with regard to the £300,000 increase in the stamp revenue. MR. MASSEY must apologize to the Council for having omitted to state the causes to which that increase was attributable. When the judicial establishments were revised in pursuance of a scheme drawn up by his Hon'ble colleague, Mr. Strachey, by desire

of the Viceroy in the year before last, it was necessary to provide a large sum in order to put those establishments in an efficient state; and in providing the ways and means for the expenditure, which was very considerable in the first instance and which promised to be formidable in its result, we thought of a project which had been urged on us for many years for revising the system of judicial stamps: that was the origin of the Act of last year. We found it necessary to provide other means for this large expenditure, which was called for by the progress of the country and by those demands for the due administration of justice which every civilized Government must be prepared to meet. In Bengal and Bombay there were certain sources of income called the Tallabána and Peon Fee Funds; they were fees payable on the service of the process of the Courts, and the wages of the persons employed in the service of those processes being very much less than the produce of the fees, they were accumulated into a fund, and appropriated to the improvement of the administration of justice. But when the Government addressed themselves to the subject on a comprehensive scale, they thought it right and just to appropriate the proceeds of these funds, and the augmentation to which the Hon'ble Mr. Shaw Stewart had referred was owing, in a great measure, to the transfer of the balances of those funds from Bengal and Bombay to the General Treasury. The Hon'ble Member rather complained that a very small portion of the increased revenue from those sources had been bestowed on the purposes to which they were appropriated. MR. MASSEY could assure the Hon'ble Member that he was mistaken, and that the funds in question were quite inadequate to meet the expenditure which the Government had undertaken on this account.

The Hon'ble Mr. Shaw Stewart had referred to a statement which had been made by him (MR. MASSEY) last year, relative to the ultimate destination of the license tax. MR. MASSEY had said generally, that he thought the tax more suitable for local than imperial purposes, and he held out to the Council a prospect, although in very guarded terms, that at some future time the proceeds of that tax would be appropriated to the Local Governments in connection with a scheme for transferring local charges to local administration. That plan had been, and was still, under the consideration of Government; and until the final arrangements were completed the Certificate Tax would continue to form part of the Imperial revenues. The Hon'ble Member had also asked for information as to the title of the Bill, the meaning of which appeared to him doubtful. He was under the apprehension that under the term "occupations," persons, such as fundholders and householders, other than those embraced in the present License Act, might be included in the new measure. MR. MASSEY

could assure the Hon'ble Member that this was not so. No one could for a moment suppose that the public creditor exercised an 'occupation' within the meaning of the Bill, and as to householders, they had been expressly exempted by executive order under the present License Act, and would, therefore, under the last clause of section 3, be unaffected by the Act now proposed.

He would have been prepared in performance of his duty, had it been necessary, to enter fully into our financial policy; but after the statements that had been made, it was not necessary to pursue the subject further at present. He thought it was the sense of the Council to be satisfied with the explanations that had been offered. If it were the pleasure of his Hon'ble friend to continue his opposition after the Bill emerged from Committee, it would then be his duty to enter into the reasons which had led him to retain the tax, and he trusted to be able to satisfy the Council of the validity of those reasons.

He had only now to express his gratitude for the terms in which His Excellency the President had been pleased to speak of the manner in which he had endeavoured to perform his duty; he had only been actuated by a desire to do what he considered best for the country and most suited to the circumstances of the time. But it was an additional gratification to him to know that his policy had met with the approval and satisfaction of His Excellency.

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Right Hon'ble Mr. Massey also introduced the Bill to amend the Consolidated Customs' Act, and moved that it be referred to a Select Committee with instructions to report in a week. The Bill was intended to remedy a small practical grievance of which the Chamber of Commerce had complained. They said—

"Ships are now despatched with as little delay as possible after clearance at the Custom House. Having secured a pilot and engaged a steamer to tow her to sea, a vessel starts at a very early hour the day after she clears (generally late in the afternoon), and is half-way down the river before a shipper can be aware that a portion of his goods has been shut out.

"A Master of a vessel may engage to take on board more than he finds, at the last moment, the ship can carry, and is unable to receive a portion of the cargo with which he clears out, but his ship cannot be detained, and the vessel leaves the port before application for re-land of short-shipment can be made within the period limited by the Act."

The object of the Bill was simply to extend the period during which an application for refund of duty could be made. The present law required the application to be made before the ship left port. The Bill extended that

period, which was a very summary one, and seemed practically a denial of the privilege which the Act accorded, to three days.

The Motion was put and agreed to.

TIMBER DUTY REPEAL BILL.

The Right Hon'ble MR. MASSEY also introduced the Bill to exempt Timber and Woods from Import Duty, and moved that it be referred to a Select Committee, with instructions to report in a week. He said that this also was a small concession to commerce. Timber was now entering very largely into the construction of public and other works, and it was represented that the duty now levied on that article had seriously impeded its importation. The operation of the Bill would involve a small loss of revenue of about £9,000, which it would be well to sacrifice for the objects represented.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to empower the Governor General of India in Council to suspend the operation of section 17 of Act XI of 1841 (for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company) in such places as he shall by notification declare—The Hon'ble Mr. Cockerell, the Hon'ble Sir R. Temple and the mover.

On the Bill for taxing Professions, Occupations and Trades—The Hon'ble Messrs. Taylor, Maine, Strachey, Shaw Stewart, Skinner, Cockerell, Minchin and Crooke and the mover.

On the Bill to amend the Consolidated Customs' Act—The Hon'ble Messrs. Maine, Strachey, Shaw Stewart, Skinner, Cockerell, Minchin and Crooke and the mover.

On the Bill to exempt Timber and Woods from Import Duty—The Hon'ble Messrs. Maine, Strachey, Shaw Stewart, Skinner, Cockerell, Minchin and Crooke and the mover.

The Council adjourned till the 27th March 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA,
The 20th March 1868.

Office Supdt. Govt Printing.—No 2296 I. C.—26-3-68.—300

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 27th March 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

PANJÁB APPEALS' BILL.

The Hon'ble MR. BRANDRETH moved that the Report of the Select Committee on the Bill to amend the law relating to appeals in the Panjáb and its dependencies, be taken into consideration. He said that the Bill which was now before the Council was drawn up by Mr. Justice Boulnois, the first Judge of the Chief Court of the Panjáb; at least, only one or two immaterial alterations had been made in it by the Select Committee to which the Bill prepared by him (MR. BRANDRETH) was referred. The Bill, in the form in which he had originally intended to ask the Council to pass it, was sent by him for the opinion of the Chief Court at Lahore. He received a reply from the Registrar to the effect that, although the Court was of opinion that the draft forwarded by him contained all the necessary alterations in the Code of Civil Procedure, he was directed to enclose a printed copy of a draft Bill, which Mr. Justice Boulnois prefer-

red to the one prepared by him. That draft was the Bill now under the consideration of the Council. With the exception of one or two not very important points, to which he would presently refer, the only difference supposed to exist between the two Bills regarded the wording and arrangement. His Bill was prepared on the plan of inserting words and adding provisoes so as to adapt the appeal chapters of the Code of Civil Procedure to the appeal system proposed for the Panjáb, and thus render that portion of the Code consistent throughout. In this he considered that he was imitating the plan adopted by the Chief Court itself, in extending the other portions of the Code of Civil Procedure to the Panjáb, according to which the several provisoes considered necessary were introduced with express reference to the sections to which they related.

In Mr. Boulnois' draft, however, which was now before the Council, it was simply said that all appeals, save as otherwise provided, were to be regulated by the Code of Civil Procedure; and then followed the provisions without any reference to the particular sections of the Code which were superseded or altered: though three or four whole sections of the Code had been entirely superseded by the provisions of this Bill, they had not been expressly repealed. No doubt the Bill now before the Council was neater in form and had a better appearance than the one which he had prepared; but it seemed to him that it was more liable to be misunderstood. He had no intention, however, of asking the Council to pass the Bill prepared by him in preference to Mr. Boulnois' draft. There was no use passing a Bill of this sort unless its wording was entirely approved by the Judges who were to introduce and administer the procedure for which it provided. As Mr. Justice Boulnois did not approve of his Bill, he was much obliged to him for drawing the Bill himself, and thus relieving him from the responsibility of bringing forward what he thought was an unsuitable Bill. The Judges, of course, understood very well what they meant by this Bill, and they were not likely to allow any other meaning to be put on it. The procedure provided for in the Bill will have been introduced and established long before other Judges, who had not known this Bill and who might possibly put different constructions on its wording, were likely to come in their place. These he considered to be very strong points in favour of the present Bill. There was only one point of substance in which this Bill differed from its predecessor that he thought he need notice. His Bill provided thirty days as the period for any appeal to the District Court, the same period as that prescribed in the Code of Civil Procedure. Mr. Justice Boulnois, however, had made the period sixty days. It was the object of this Bill to make the civil procedure of the Panjáb conform, as closely as the different

circumstances of the Panjáb could admit of, to the Code of Civil Procedure, and MR. BRANDRETH certainly saw no reason, from his experience in the Panjáb, why any difference in this respect should be maintained. The Chief Court, however, appeared to have deliberately altered the provision of his Bill from thirty days to sixty; and though he did not concur in this alteration, he certainly should not take on himself to ask the Council to accept his opinion on the point in preference to that of the Chief Court. He had no doubt, however, that this Bill would be a very great improvement on the existing system of appeal, and therefore he had no hesitation in asking the Council to pass it.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH moved that, in section 4, line 5, the words "in the said Acts and" be inserted after the word "as." He had just said that he thought the Bill now before the Council would be more liable to be misunderstood than the one which he had prepared. As the principal instance of a want of clearness about the present Bill, he would mention that, in the Panjáb Courts' Act and in the Panjáb Chief Court Act, a mode of procedure on certain points in regard to appeals was provided, but in the Code of Civil Procedure, the remaining sections of which would by this Bill be extended to the Panjáb, a somewhat different procedure in regard to the same points was laid down. Again, in the Panjáb Courts' Act, a district was defined to be the local jurisdiction of a Deputy Commissioner, but in the Code of Civil Procedure a district had a different meaning. Now, it was quite certain that the Chief Court did not wish that any of the provisions, either of the Chief Court Act or of the Panjáb Courts' Act, should be superseded by this Bill, and it was very likely they would not allow any such construction to be put on the Bill; but if we looked for the meaning of the fourth section of the Bill merely to its wording, without any knowledge of the intention of the Chief Court, it seemed to him that the section could not be read in any other way than as superseding the procedure-provisions of all previous Acts. It was therefore with a view of removing all possible doubt on this point that he had prepared the small amendment which he now moved.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the Bill as amended by the Select Committee, with the further amendments now adopted, be passed.

The Motion was put and agreed to.

CONTAGIOUS DISEASES' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill for the better prevention of Contagious Diseases, said that the Bill was intended to prevent the spread of venereal disease in the maritime towns of British India, and, if possible, to extirpate it. It had been recommended by all the Local Governments which had such towns within their territories, and it had become matter of urgency through the statistics which had reached the Government concerning the condition of the seamen in those towns. The credit of beginning this description of legislation belonged to that Council. It passed the Act numbered as XXII of 1864 relating to military cantonments, and under section 19 a system had been established in several great cantonments exactly analogous to that which MR. MAINE was about to propose to the Council. The first step being taken, the English Parliament avowedly followed the Indian example, by passing the Contagious Diseases' Act, 27 & 28 Vic., c. 85. This statute was found not to be sufficiently stringent, and was followed by an Act of Parliament of last year, 29 & 30 Vic., c. 35. MR. MAINE had carefully examined the English Acts, and had considered all possible means of adapting them to this country. But he was satisfied that they were not suited to India. The machinery they created was set in motion by an information concerning suspected disease, laid by certain Police officers before a Magistrate. MR. MAINE was convinced that such a system could not be introduced here without a risk of grievous oppression. He proposed, therefore, to adopt a scheme which emanated from the Government of Bengal, and which was founded on certain proposals from the energetic Health Officer of Calcutta, Dr. Tonnerre. The first step was for the Government to establish lock-hospitals, or to set apart parts of hospitals to be devoted to the purposes of lock-hospitals. This being done, the occupation of prostitution would be rendered punishable when followed by persons who had not submitted to the conditions of the Act. These conditions would now be stated. The Local Government would prescribe a mode of registration, and all women registering themselves would be bound under penalty to submit to rules of inspection which would be made under a power given to the Local Government by the Act. The Local Government would also make rules as to reports by persons appointed to inspect; and, where the inspecting person was not a medical man, breach of such rules would be punishable. The last provision was inserted because it was thought, on good authority, that it might be desirable to employ female agency for inspection. A section taken from the English Act would render it penal in the keeper of a house of ill-fame to allow it to be frequented by unregistered prostitutes. Every registered woman would be compellable to present herself at a lock-hospital

on receiving a certain notice, and very strict rules would be laid down as to the discipline to be observed by patients in lock-hospitals. There would also be a provision, to be specially introduced into certain towns by order of the Local Government, under which a certain class of officers, specially empowered, would be able to direct a registered woman either to live or not to live in certain parts of the town. Such a provision was not applicable to Calcutta, but there were maritime towns in India for which it was said to be very desirable. Finally, the Local Government was to prescribe the formalities which were to be observed by women desirqus of taking their names off the register.

The principle of the Bill was the delegation to the Local Governments of power to deal with this subject. It would depend mainly on them how it would work. That it would not, in certain cases, cause some degree of oppression, MR. MAINE was not prepared to assert. But the Council would recollect that the sole justification for this sort of legislation was that it should be thorough. At the same time his Hon'ble friend Mr. Strachey, who had just come from the Chief Commissionership of Oudh, would be able to assure the Council (or rather the Committee, for MR. MAINE hoped that all necessary discussion on this Bill would be confined to Committee) that a strictly analogous system had been established in the cantonment of Lucknow, that it did not work oppressively, and that it was even felt as a benefit by the class directly affected by it.

The Motion was put and agreed to.

REPEAL OF OBSOLETE ENACTMENTS' BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill for repealing certain enactments which have ceased to be in force or have become unnecessary, be taken into consideration. He said that it would be seen from the Report of the Select Committee on the Bill that the schedule attached to it had undergone considerable expansion in Committee, and that no less than 170 Regulations of the Bengal Code, and upwards of 60 Acts applicable to the whole of India, had been added to it. Most of these Regulations were first selected for repeal by Mr. Justice Hobhouse, a late Member of the Council, and underwent a thorough scrutiny in his hands. On receiving charge of the Bill, he (MR. COCKERELL) had carefully examined Mr. Hobhouse's list, and had, after much consideration of the whole body of Regulations and Acts, proposed further additions to the schedule of the Bill.

The whole of the Regulations and Acts so selected for repeal were carefully gone over by the Committee, all points on which any doubts could be thought to arise had been fully discussed, and in the settlement of the schedule the

Committee had erred, perhaps, rather on the side of over-caution, than in the contrary direction, for he (MR. COCKERELL) did not over-state the facts of the case in saying that, in a matter of this kind, the Select Committee felt themselves under peculiar responsibility to the Council; as it was but natural to assume that, the Council in dealing with a Bill which treated solely of details, the correct preparation of which could only be attained by the most minute and laborious investigation, would be almost obliged to accept the Committee's conclusions. Nearly two months had elapsed since the Report of the Committee was presented, and, in the interim, the widest publication had been given to the recommendations of the Committee. The Governments of those Provinces more immediately affected by the Regulations of the Bengal Code had been consulted, and had given their general approval to the removal from the statutes of the Regulations entered in the schedule. The Government of the North-Western Provinces demurred only to the repeal of Act XXXIV of 1860. He would venture, nevertheless, to submit to the Council that the objections of the Government of the North-Western Provinces to the repeal of that enactment would, on examination of the preliminary clauses of the Bill, be found to be invalid.

The Act in question provided indemnity to certain classes of officers for acts done by them during the mutinies. He thought that the apprehension that those acts could be called into question if that Act were removed from the statute-book was without reason. He would now cite the clause in the present Bill which appeared to him to make adequate provision for the survival of the object and purpose of the Act which it was proposed to repeal, and, in so doing, would submit more particularly for the consideration of the Hon'ble Mr. Maine whether the provision did not fully meet the case.

The clause was as follows :—

"Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized, or derived by, in or from, any enactment hereby repealed."

The result of Act XXXIV of 1860 was to confer certain exemptions and privileges on certain classes of officers, and he (MR. COCKERELL) held that that exemption and privilege were, under a proper construction of the clause above-cited, continued to those officers. If he was correct in that view, it would be unnecessary to alter the schedule as amended by the Select Committee.

Since presenting the Report to the Council, further consideration of the subject had led to the discovery of a few additional Regulations and a single Act which it was thought might unobjectionably be added to the schedule. He should presently move, in the form of an amendment, that those additions be made.

If the Bill as amended were passed into law, the result would be that, out of about 650 Acts, 235, or more than one-third, would be repealed; and out of about 350 Regulations of the Bengal Code, 188, or more than one-half, would be removed from the statute-book. This result, he believed, would be regarded with satisfaction by those who had to administer the law, as well as by those who were affected by it, if the effect of the Bill was merely to disencumber the statute-book of a large number of useless enactments. But he thought it would do more. It would tend in many cases to remove doubts in cases of those enactments whose provisions had been virtually superseded by other enactments of a more comprehensive, and at the same time to some extent conflicting, character, as to the intentions of the legislature in regard to those earlier provisions of the law which, though by implication overruled and rendered nugatory by the later enactments, had never been specifically repealed.

The Hon'ble MR. MAINE would rather have cited the clause in the Bill which provided that "this Act shall not affect the validity or invalidity of anything already done or suffered;" but thought that, in spite of the wide language of the saving clause, it would be safer to omit Act XXXIV of 1860. It was an important and peculiar law, and in enactments like the present it was always better to be on the safe side.

The Hon'ble MR. SHAW STEWART as a Member of the Select Committee, would express his willingness to adopt the Hon'ble Mr. Maine's suggestion to leave out Act XXXIV of 1860 from the schedule. He had in Committee expressed his doubts of the wisdom of including the Act.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that Act No. XXXIV of 1860 be omitted from the schedule.

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved the following amendments of which he had given notice. He said there was one alteration which he wished to make. Regulation VIII of 1829 had been included in the notice of amendment by an oversight. He did not wish to include that Regulation in the schedule because it had already been repealed; but he would substitute for it Regulation III of 1831 (for legalizing the circulation of copper half-anna and single

pie pieces), the whole of which might be repealed. Its provisions were superseded by certain intermediate Regulations primarily, and also by Act XIII of 1862, which was the law now in force for the regulation of copper-coins. With the alteration he proposed the amendment would stand thus :—

That the following enactments be added to the schedule :—

No. of Act.	Title of Act.	Extent of Repeal.
XXVIII of 1852	An Act to relieve the Court of Sudder Foujdaree Adawlut at Bombay from the superintendence of the Police in that Presidency.	So much as is not repealed.

No of Regulation	Title of Regulation.	Extent of Repeal
II of 1793	A Regulation for abolishing the Courts of Maal Adawlut or Revenue Courts, and transferring the trial of the suits which were cognizable in those Courts to the Courts of Dewanny Adawlut; and prescribing Rules for the conduct of the Board of Revenue and the Collectors.	Section 17, and the following words in section 46. "giving land in farm to any European, directly or indirectly, or accepting the security of a European for any farmer, dependent talookdar or ryot, or"
IX of 1793	A Regulation for re-enacting, with alterations and modifications, the Regulations passed by the Governor General in Council, on the 3rd December 1790, and subsequent dates, for the apprehension and trial of persons charged with crimes or misdemeanors.	Section 62.
XIX of 1793	A Regulation for re-enacting, with modifications, the Rules passed by the Governor General in Council, on the 1st December 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of Revenue to Government, under grants not being of the description of those termed Badshahee or Royal; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged or become liable to the payment of public Revenue.	Section 23.
XXII of 1793	A Regulation for re-enacting, with alterations and amendments, the Regulations passed by the Governor General in Council on the 7th December 1792, for the establishment of an efficient Police throughout the country.	Sections 24, 25, 26, 27, 28, 30, 35, 36 and 39.
XLI of 1793	A Regulation for forming into a regular Code all Regulations that may be enacted for the internal Government of the British territories in Bengal.	The whole.
XLVIII of 1793	A Regulation for forming a quinquennial Register of the landed Estates in Bengal, Behar, and Orissa, subject to the payment of revenue to Government, and of the amount of the fixed annual revenue payable to Government from each Estate.	Section 2, clause 2.
V of 1795	A Regulation prescribing Rules for the conduct of the Collector of the public Revenue in the Province of Benares.	Section 17.

No. of Regulation.	Title of Regulation.	Extent of Repeal
XXXIV of 1795	A Regulation for re-enacting, with modifications, the Rules respecting the pensions payable from the Government and Moolky Treasuries in the Province of Benares.	Sections 5, 12 and 13.
XXV of 1803	A Regulation prescribing Rules for the conduct of the Board of Revenue and the Collectors; and for declaring the proprietary right in the lands, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, to be vested in the Zemindars and other landholders, under the terms and conditions of the settlement of the Land Revenue formed by the Honourable the late Lieutenant-Governor and the Board of Commissioners, pursuant to the authority vested in them by His Excellency the Most Noble the Governor General.	Section 16.
LIV of 1803	A Regulation for postponing the operation of Section XX, Regulation XXXV. 1793, within the Zillah of Chittagong.	The whole.
II of 1808	A Regulation for the better security of the property of minors subject to the jurisdiction of the European Court at Chandernagore.	So much as has not been repealed.
II of 1812	A Regulation for levying a Duty on the coinage of Silver-Bullion and on the re-coinage of Rupees and other coins, with certain exceptions, at the Mints established at Calcutta, Furruckabad and Benares; for defining the Weight and Standard of the Benares rupee; for modifying the rates of Duty at present levied on the coinage of Gold Bullion in the Mint of Calcutta; and also for establishing certain rules for the conduct of the business of the above-mentioned Mints respectively.	The whole Regulation, except sections 1 and 3, so much of section 5 as is unrepealed and section 6.
XIX of 1812	A Regulation for making certain alterations in the rules before established for the collection of the Government Customs and Town Duties.	So much as has not been repealed.
I of 1813	A Regulation for modifying the Rules established respecting the Settlement of Cuttack, the Pergunnah of Puttaspore, and its Dependencies.	The whole.
V of 1814	A Regulation for amending such parts of the Regulations before enacted as relate to the appointment of the Judges of the Provincial Courts of Appeal and Circuit.	The whole.
IX of 1814	A Regulation for explaining the extent and meaning of Regulation XIII. 1813, and Regulation III. 1814.	The whole.
I of 1826	A Regulation for augmenting the number of Judges of the Provincial Courts of Appeal and Circuit, as may from time to time appear necessary.	The whole.
II of 1827	A Regulation to legalize certain Criminal trials, held in the Division of Bareilly.	The whole.
III of 1831	A Regulation for legalizing the circulation of copper half-anna and single pie pieces.	The whole.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved—

That, in the third column, opposite Act IX of 1859, "section 20" be added.

Also that, in the third column, opposite Regulation II of 1801, the following words be substituted—"The whole Regulation, except sections 7, 14 and 15."

Also that, in the third column, opposite Regulation XXV of 1814, the following words be substituted—"The whole Regulation, except section 15."

Also that Regulation VI of 1826, section 2, clause 2, be omitted.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended by the Select Committee, with the further amendments now adopted, be passed. He thought he might confidently assure the Council that, in passing the Bill in its present form, they were not risking the removal of any Regulation or Act of any practical value. He was far from saying that this repeal measure was altogether complete. He felt that it was very possible that, in many Regulations untouched by it, there might be a section or portion of a section that might well be dispensed with ; but it must be borne in mind that this was simply a Repealing Bill, and that the alteration of laws, and the striking out of single sections and portions of sections which appeared unnecessary, was the work of consolidation. He trusted that the Bill about to be passed was merely the preliminary to the much more useful and extensive work of the consolidation of the Regulations and Acts; and that whenever the regular business of the Council might admit of that work being undertaken, it would be undertaken, as the present measure would be incomplete unless it was to be regarded simply as a preliminary to that larger undertaking.

The Right Hon'ble MR. MASSEY said he had had the honour of sitting on the Committee, and although, of course, he could contribute little to the result of its labours, he had had ample opportunity of observing the extreme care and assiduity bestowed on the measure by the Hon'ble Mr. Cockerell and the Hon'ble Mr. Hobhouse, as well as by his friend the Assistant Secretary, to whom the conception of the Bill was due, and whose learning and labours in bringing it to its present form were highly appreciated by everybody who sat on the Committee. MR. MASSEY thought this measure an important step in simplifying our legislation, and he concurred with the Hon'ble Mr. Cockerell in the hope that it would lead to more important results in the same direction.

The Motion was put and agreed to.

KING OF OUDH'S DEBTS' BILL.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to appoint a Commissioner to enquire into certain claims against the King of Oudh, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in a week. He said, it would be in the recollection of the Council that a draft Bill on this subject had, in the last autumn, been introduced under the auspices of the Hon'ble Sir Henry Durand. SIR RICHARD TEMPLE had now the honour, by Sir Henry Durand's direction and request, to take charge of the Bill, as representing the Foreign Department. In the Bill as published there were two main objects. One was to appoint a Commission to enquire into the various pecuniary claims brought against His Majesty the King of Oudh: the second object was to preclude His Majesty from entering into any kind of contract involving him in pecuniary obligations. Since the publication of the Bill, the appointment of a Commission had been rendered unnecessary, because the political authority (Colonel Herbert), assisted by the High Court Pleader, Munshí Amír 'Alí, had, in a manner highly creditable and honourable to themselves, succeeded in settling those claims. In justice to His Majesty, the members of his household, and his officials, it was fair to say that those claims appeared to have been very much exaggerated, or rather that they were brought in an objectionable manner by the creditors. Claims to the amount of about fifty lákhs of rupees had been adjusted and settled for eight lákhs of rupees, and that to the entire satisfaction of the claimants. For this reason the appointment of a Commission was no longer necessary. But inasmuch as that course had been so far successfully avoided, it seemed desirable to prevent fresh complications occurring in future. It was therefore necessary to introduce the Bill with the view of enacting those clauses that precluded the institution of suits and the obtaining of decrees against the King, and which rendered His Majesty unable to contract pecuniary obligations. The existing state of the law had been exactly described in the Statement of Objects and Reasons published with the Bill, and, with Sir Henry Durand's permission, SIR RICHARD TEMPLE would read a paragraph from that statement:—

> "In amendment of Act VIII of 1862 (to protect the personal dignity of His Majesty the King of Oudh), the Bill declares that no suit shall be commenced and no writ issued against His Majesty or his property, unless with the previous consent of the Governor General in Council. As the law stands, though writs cannot be issued against the King's person or property without such consent, suits may be instituted and decrees obtained against him. It is obviously expedient to prevent the accumulation of such unsatisfied decrees."

The present Bill would supplement previous legislation, by providing that, from the date on which the Act should come into operation, His Majesty should

be incapable of entering into any contract which might give rise to any pecuniary obligation on his part. That, then, was the object with which the Bill was now introduced. The Council were doubtless very well aware that the circumstances of His Majesty the King of Oudh, and of his family and household, were peculiar. It was a matter of public propriety that claims of the kind referred to should not arise. It was a matter of political convenience that His Majesty and his family and household should be maintained in a position of comfort and dignity, and this the Government would be able to effect with the assistance of the Bill which he now had the honour to introduce.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. MAINE moved that the Hon'ble Mr. Strachey and the Hon'ble Sir Richard Temple be added to the Select Committees on the following Bills:—

To define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the Hon'ble Sir Richard Temple be added to the Select Committee on the Bill for the suppression of Frauds in the Cotton Trade.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to appoint a Commissioner to enquire into certain claims against the King of Oudh, and for other purposes—The Hon'ble Major General Sir H. M. Durand, the Hon'ble Mr. Maine and the Mover.

The Council adjourned till the 31st March 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA,
The 27th March 1868.

Office Supdt. Govt. Printing.—No. 2550 L. C.—3-4-68.—160.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic*, *cap.* 67.

The Council met at Government House on Tuesday, the 31st March 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Khwája 'Abd-ul-ghani.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R Temple, K. C. S. I.

CERTIFICATE BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill for taxing Professions, Occupations and Trades, and applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT having declared the Rules suspended,

The Right Hon'ble MR. MASSEY moved that the Report of the Select Committee be taken into consideration. He said that, when he introduced the Bill, it was his duty, with reference to the motion of which his Hon'ble friend Mr. Skinner had given notice, to inform the Council that the Government considered this Bill an essential part of the Budget, and that the adoption of his Hon'ble friend's motion would necessitate the reconstruction of the financial arrangements of the year; and MR. MASSEY had also added, what was of minor importance, that if his Hon'ble friend's motion was adopted, it would not

be consistent with his duty to aid in that reconstruction. He thought it more respectful to the Council that he should make that announcement, because, in the event of the failure of the Bill, it would not have been right for him to retire from the Government leaving the financial arrangements incomplete, without having given notice of his intention. He believed that what he had said was understood by Hon'ble Members in that sense—certainly it was far from his intention to impose any restriction to free discussion of any measure before the Council. But while the Government were obliged to assert their adherence to the Bill as a part of the financial arrangements of the year, they were willing to consult the wishes of the Council in making any amendments in the Bill which were not inconsistent with its main purpose; and not only were the Government so willing, but he had expressly invited the Council to aid the Government in that respect. He had now to express, on the part of the Government, their grateful acknowledgments of the fair and candid spirit in which, without excepting the two Hon'ble Members who had thought proper to record their dissent from the principle of the Bill, the Committee had approached the question. MR. MASSEY thought the labours of the Committee had resulted in a considerable improvement in the details of the Bill.

A question had been raised by the Hon'ble Mr. Shaw Stewart with regard to the word "occupations" in the title of the Bill. The Committee had considered the probable application of that term, and as it appeared to be one of an ambiguous import, and unnecessary for the purposes of the Bill, they had recommended its omission. The title of the Bill accordingly now was "a Bill for taxing professions and trades."

In the existing Act, the partners of a firm were personally taxed. But the Committee considered that that was not exactly a fair mode of arriving at the profits of a partnership, as there might be one or more of the principal partners out of India, and the management of the business might be conducted by a partner having only a small pecuniary interest in it. The Committee, therefore, came to the conclusion that the tax should be assessed on the firms, and not on the individual members of the partnership. The first schedule in the Bill now commenced with persons whose annual profits should be assessed at Rs. 400,000 or upwards; and the second class in the same schedule applied to persons whose profits were from Rs. 200,000 to Rs. 400,000. Those two classes were added to the Bill in order to meet the case of partnerships. With regard to Companies, they were, under the present law, assessed according to their paid-up capital. That was found not to be a satisfactory criterion, and the first

notion of the Committee was that Companies should be placed on the same footing as partnership firms, and should be taxed on an estimate of their profits. But on consideration it appeared that there were great difficulties in applying that rule to Joint-Stock Companies. The Committee had therefore preferred to fix on Companies a special payment of Rs. 500 in respect of every place in India where they carried on their business. But inasmuch as that mode of taxation might be unfair to some Companies, and might have the effect of exacting a larger amount than was required on the principle on which the assessment was to be made under the Bill, the Committee had left it optional to Companies to be taxed at one per cent. on the amount of their dividends. He did not imagine that the option proposed to be given would be frequently resorted to; but he believed there were cases in which a tax of £50 would operate unjustly if imposed on all Companies without exception.

The Government had had considerable difficulty, under the present law, in arriving at the exact number and position of servants and persons employed by Companies. The Collector had been obliged to ask the officers of a Company for a list of the persons employed by them, but the Companies had not unreasonably been disinclined to accede to the request. The Committee had therefore thought it not unfair to require from Companies a return of the persons employed by them, showing the salaries received by each, with the view of assessing them in the same manner as public servants. The tax due from every servant under the Bill would be deducted by the treasurer of the Company from the salary paid to him, and the amount of such deductions would be made over to the Collector. There was also a provision which the Committee had introduced into the Bill in relief of traders. They proposed to take from traders payment in two equal instalments; and if any person preferred to pay the whole tax in one sum, a discount of 2½ per cent. would be allowed. But as a trader might die or become insolvent, or become incapable of carrying on business, during the currency of the year, if any of those events occurred in the course of the first half of the year, payment of the second instalment would not be required from him; and, if it had been paid, it would be refunded.

They then came to the subject of penalties. If a trader, after receipt of a notice, failed to pay the sum in which he was assessed, he would be subject to a penal process: he would be summoned before the Magistrate, and, on proof of the service of notice, would be subjected to a fine equal to double the amount in which he was assessed; the payment of such fine, however, would exonerate the person from any further taxation; the duty, in fact, would merge in the fine.

It appeared that some obstacles had been thrown in the way of appeals under the present law, by the imposition of the stamps necessary on such proceedings. The Committee had therefore provided that if the Collector or the Commissioner, on a consideration of the case, should be of opinion that the appeal was well founded, the stamp-fee, as well as the tax, might be refunded.

There was an amendment which the Hon'ble Mr. Shaw Stewart had placed on the paper, with regard to the exemption of non-commissioned officers in civil employ in the receipt of less than Rs. 6,000 per annum. It was the subject of some discussion in Committee, and was resisted on the general ground that it was not desirable to extend the exemptions under the Bill. MR. MASSEY however did not think that the proposed exemption could, on its merits, be rejected, and, so far as he was concerned, he was willing to accept it.

He did not know what course his Hon'ble friend Mr. Skinner proposed to take with regard to the amendment which he had placed on the paper. MR. MASSEY had had no communication with him on the subject, and it was not for him (MR. MASSEY) to enquire what were his Hon'ble friend's intentions. The Council would presently hear what his intentions were; but MR. MASSEY ventured to hope that, after the ample discussion which took place last week, his Hon'ble friend would not persist in his opposition.

The Hon'ble MR. SKINNER said that the Council were aware of the grounds on which he had opposed the introduction of this Bill. The rules of our procedure did not admit of his speaking a second time upon the Budget in the debate which arose on the introduction of the Bill; and he was equally debarred to-day from reviving that debate, or he would have endeavoured, more clearly than he feared was the case with his previous efforts, to substantiate his objections to the policy on which this Bill was founded. The Hon'ble Mr. Strachey, who undertook the defence of that policy, succeeded certainly, in the course of his able speech, in throwing some additional light on the intricacies of the Budget-accounts; but MR. SKINNER could not admit that by his remarks Mr. Strachey had succeeded in conveying to his mind any justification of the principles according to which those accounts had been framed. He sincerely respected the opinions of all of those to whom he was opposed on this question, and he felt all the disadvantage that attached to a position of antagonism, not only to such high authorities in these matters as the Right Hon'ble member opposite and the Hon'ble gentleman on his left, but to His Excellency himself. His judgment, however, refused to surrender to the arguments that had been used in support of the necessity for the means of taxation which this Bill provided, and he was bound to state, as he did with all deference, that the debate on the

Budget had left him unshaken in his conviction of the needlessness under present circumstances, and of the impolicy, of the proposed measure.

He could not presume to say whether or not the principles on which he had declared his hostility to this Bill would have found acceptance with a majority of this Council had full freedom of discussion been left to it; but, constituted as was the Council, he might fairly say that, if every other argument against him had failed, it could hardly have been expected that he should successfully contend against the threat which the Right Hon'ble Mr. Massey had thought it right to hold out, of the consequences that would follow from the adoption of his (MR. SKINNER'S) views,—a threat in which he must assume to consist the principal defence on which this measure rested.

But if the Government were resolved to impose a burden of this sort upon the country, upon what principle was it that particular classes were singled out and fastened upon to bear that burden? Why levy a tax upon enterprise and leave property untouched? Why should the landed and funded interests be exempted from contribution to an impost, from the application of which they derived at least equal benefits? Every stride that was made in the extension and consolidation of good government served but to enhance the value of their property; and if their gain was not greater than that of other classes, it was at all events more permanent.

Had he been permitted to do so, he would have moved certain amendments to this Bill, so that, by extending its provisions to the exempted classes, the taxation might have been more impartially distributed, and the assessment on all classes thereby been modified; and he would in that case have been prepared to support his proposals with reasons of, as he should hope, adequate force.

It appeared, however, that, by the Statute, the power of making a motion of this sort was reserved entirely to the Government, and it was only left to him, therefore, to express his regret that, in the exercise of that power, the Government should not have assumed the responsibility he was prepared to undertake.

He saw that the sense of the Council was not with him in his present amendment, and to press it under the circumstances would involve a course of action that might seem to degenerate into a factious opposition. With His Excellency's leave, therefore, he would withdraw his amendment. He should not, however, on that account withdraw his protest against the Bill; but it would be sufficient for him that, in the discharge of his conscience, he recorded his vote against it.

The amendment was withdrawn.

His Excellency the President said he felt himself that morning unable to discuss a matter of such importance; nevertheless he thought it his duty to at once state to the Council his reasons for objecting to the amendment which the Hon'ble Mr. Skinner had proposed to put to the Council. His Excellency need not say that no gentleman acquainted with the Hon'ble Mr. Skinner would ever attribute to him anything like a factious motive in the course he had thought proper to take. His Excellency was quite sure that everybody would agree that what Mr. Skinner did was done from a high sense of duty. The reasons which had influenced His Excellency in rejecting the amendment which the Hon'ble gentleman intended to propose were founded on motives of principle as well as of wide expediency. It must be clear to Hon'ble Members that it would be very inconvenient, and very inexpedient, that the Government, having deliberately decided on its line of policy, should admit of members not connected with Government moving amendments in the Bill before the Council, so as to tax new classes or new descriptions of persons. Such a course might lead to grave and serious inconveniences. But though His Excellency objected to the proposed amendment, there was no objection in his mind to the full and fair discussion of all points connected with the motion of which the Hon'ble gentleman had given notice; and His Excellency was quite prepared, himself, so far to enter on the principles which influenced the Government in the policy which they had adopted.

Practically, the points to which objection was raised referred to the relative disadvantages of the license-tax as compared to the income-tax. Now, His Excellency was not prepared, himself, to go into the merits or demerits of an income-tax. He thought a great deal might be said, and fairly said, in favour of such a tax. The Government had had before them various schemes for the taxation of all classes of the community; but after long and anxious consideration, they had come to the conclusion that the proper line for them to pursue at present was to maintain the principles of the license-tax. Therefore, while on principle maintaining that tax, we at the same time thought it right, and desirable, and reasonable, that the chief points which had been raised as objections to the working of the tax should be altered; and the result had been the preparation of the present Bill, which must be admitted by all impartial persons to be free from the salient objections to the Bill of last year. There was also another advantage in what had been done, which consisted in the fact that if, hereafter, at any time it might be deemed right to adopt an income-tax for the country, what would be done this year would be in furtherance of that object. A good deal had been said out of doors regarding the advantage and importance of an economical administration of the finances of India. His Excellency did not think that the Gov-

ernment of India were fairly open to rebuke on that point. He did not think that any Government had ever more carefully, more frugally, and at the same time more liberally, administered the finances of India than had been the case during the last few years. We had done a great deal to improve the position of various classes of the community; we had done a great deal to improve the condition of the soldiery in India; we had improved the condition of a large section of the civil establishments, of the Native Judges, and the like; and we had undertaken various other reforms and changes, all of which inevitably must cost large sums of money. The rise of prices alone had entailed large expenditure on the Government. Nevertheless, in spite of those circumstances, the general expenditure had been kept within reasonable bounds. One of the many important duties of the Financial Department consisted in hearing and considering schemes, more or less forcibly advanced, of considerable expense, and HIS EXCELLENCY might even challenge criticism on that subject. He had no hesitation in saying that there was no Government in the world, of anything like the same proportions, where the expenditure of the Government was more fairly, more carefully, and more anxiously considered, than was done by the Government in India. We were all well aware that the revenues of India to some extent were certainly elastic; but so was the expenditure; and it might be said with truth that the expenditure had from year to year increased *pari passu* with the income.

There were one or two points connected with taxation to which the Hon'ble Mr. Skinner had referred, and regarding which HIS EXCELLENCY wished to say a few words. As HIS EXCELLENCY understood his speech on the 20th March, he (THE PRESIDENT) understood that, while Mr. Skinner objected to all new taxation, nevertheless, so far as the principle of the license-tax was concerned, he thought that the objections to that tax were one degree less strong than to the income-tax. But be that as it might, whatever were the advantages of the income-tax, as regarded one large section of the community, it could not be denied that the burdens which that class bore were very high, and in fact were undeniably greater than any burden which any other class of the community had to bear. HIS EXCELLENCY alluded to the land-tax. There was no doubt that the land-tax in India, or if his Hon'ble friend liked to call it so, the Government rent for the land, was very large. In fact, the burden in former days, in many Provinces, was so great that it seriously impeded the improvement of the country by preventing the cultivation of the soil and the investment of capital in land. HIS EXCELLENCY could well recollect the days when, in the Upper Provinces, in Madras, and all over India, except Bengal, our land-tax was so high that it had a most serious effect on the progress of the country and the condition

of the people. That day had passed by; but nevertheless it was undeniable that, even now, the land-revenue of India bore a very high proportion to the rent of the land. Only a few years ago, in the North-Western Provinces, the proportion of the Government demand was equal to two-thirds of the rental: since then the Government proportion had been fixed at one-half. That principle had obtained in all the different Provinces, such as the Panjáb, Oudh, the Central Provinces, and so forth, for the last ten or twelve years. Yet, to that share of the rent which the Government took, there had been added a considerable amount in the shape of local charges and cesses. In most of the Provinces in this Presidency which were not permanently settled, the cesses did not fall short of fifteen per cent. in addition to the Government percentage of the rent, so that the demand on the landholder amounted to full sixty-five per cent. of the rent. Though the cesses in the Bombay Presidency did not amount to anything like that, they were still very considerable. After settlements were made, one anna in the rupee was added for educational and road purposes. As His Excellency had observed before, whatever might be said in favour of a general income-tax, he thought it could not be denied that the land in all the Provinces which he had mentioned was very heavily burdened. This, however, was no reason why the landholders of Bengal, Behar and Orissa should not be asked to contribute in like manner towards the local wants of their Province; and His Excellency had great hope that His Honour the Lieutenant Governor of Bengal would take that matter into consideration; and that he would induce the landholders of Bengal to meet the wants in those respects of the Lower Provinces.

In speaking of the care with which the finances of India had been administered, His Excellency might refer to the very considerable reduction made in the Army of India. Since the beginning of 1864, the British Army in India had been reduced by no less than 7,159 men. That Army now amounted to 61,856 men; and such had been the peace and prosperity of the country that, with that reduced force, they had been enabled to contribute to the service of Her Majesty in Abyssinia four regiments of British infantry and several batteries of artillery. The Native Army also had been reduced to 126, 623 men, which His Excellency considered the very least that could be maintained for the duties of the country.

His Excellency would now advert to one other subject. It appeared that there were serious apprehensions in some quarters as to the intentions of the Government in regard to expenditure on account of reproductive public works, and he had even seen it stated in some journals of eminence that the Government had no present intention of expending adequate sums of money in extending irrigation. Nothing could be more mistaken.

This Government had never varied in its determination to do all that was possible to push on the construction of irrigation works in all parts of India; but to wish for their construction was one thing, and to accomplish it was another. The Government of India, it must be remembered, was not concerned in the actual business of local administration, and its duty in respect to the carrying out of public works was of necessity limited to providing the needful funds, and by its orders or exhortations stimulating the several Local Governments to energetic action, and promptly responding to all proposals issuing from those authorities which called for the concurrence of the central Government.

It was from the very first perfectly well known by all the officers of the Government concerned with the administration of the Public Works Department, that any very rapid prosecution of new irrigation works was not to be expected at first starting. India was the only school for engineers who had the special knowledge which was requisite for making projects for such works, and they must therefore wholly rely upon their own resources in respect to the first designs. At the same time, from the comparatively small number of engineers who had been employed on irrigation works in past years, and from the special qualifications needed for preparing new projects, and from the obligation to maintain all existing works in proper efficiency, there had been an absolute limit put to the number of officers who could be set to work on the preparation of new designs. But considering all these things, the progress made since the Home Government finally gave their assent to the proposals of the Government of India relative to the extension of irrigation had been very satisfactory.

The Government of India last year allowed £700,000 to be entered in the estimates as the provision for works of irrigation, to be met from borrowed money. It appeared from the last accounts that had been received that not much more than half of that sum would actually be spent. But the diminished expenditure was not in the smallest degree due to any action of the Government of India in restricting the grants, but wholly to the want of ability of the local public works officers to spend the money assigned for irrigation works, to the extent that had been anticipated at the commencement of the year. It must be explained that the Government, when declaring its intention to provide, by borrowing, all funds needed for the prosecution of irrigation works, felt that it would be essential to take precautions to prevent the thoughtless outlay of the money, and prescribed certain conditions with which it was necessary for every work to comply before it could be aided by borrowed money. First, it was required that the work should be estimated to cost not less than £10,000, and, second, that it should be of such a nature as to be susceptible of having the returns derived from it

shown in a distinct manner. It was felt to be a duty of the Government at any future time to be able to show precisely on what specific works the money had been spent, and what was the exact pecuniary result to the State from their operation. It was probable that the Government would reduce the limit of £10,000 to £2,500, but till now there had been no obstruction to the prosecution of any single work ready for execution, so far as the Government of India was informed, from want of funds.

To show generally what had been done in the way of pushing on projects during the last year, the operations of each Province would be briefly mentioned.

Beginning with the Panjáb, they had the new project for a canal from the Sutlej, roughly estimated to cost about two millions, which would immediately receive sanction to admit of the exact line being marked out on the ground, and the detailed designs and estimates of the works prepared. It might be hoped that work would actually be begun next season.

Next, the remodelling of the Bárí Doáb canal, with a view to increasing the supply of water from the Beas river, was under consideration. Also a large project for improving the Western Jumna canal, and for extending it into the arid districts near Sirsá.

Surveys had also been put in hand for projects for canals to be derived from the Sutlej, during the monsoon months, for the country between Fírozpúr and Múltán; and like surveys were also going on for extending the canals on the right bank of the Indus.

There had been some difficulty in finding qualified officers for all these surveys, but they were believed to be going on satisfactorily.

In the North-West Provinces, a new project for a canal from the Jumna, to leave it below Delhi and to irrigate the Agra and Muttra districts, at a cost of about half a million, had been sanctioned in the rough, and was already in great part marked out. The remodelling of the Ganges canal, and the arrangements needed for making it a complete line of navigation throughout its length, were in progress, and some parts of the designs had already been received. When these and other contemplated navigation-lines were carried out, there would be continuous water communication from Lahore to Delhi, Agra, the Doab, and on into Oudh.

Plans were under consideration for carrying out extensive works in Rohilkhand on the north of the Ganges, which would combine irrigation and drainage.

Engineers were also at work in Bundelkhand, preparing projects for utilizing the water of the three chief rivers which flowed through that Province. In connexion with these operations it would be seen whether a further supply of water could be secured from the lower part of the Jumna to be led to Allahabad.

In the Province of Oudh, surveys were also in progress for a canal to be taken from the Sardá; this would be a first class work, not smaller than the Ganges canal, and might probably cost two millions or more.

In Bengal, on the North, the engineers were at work in Tirhoot, with a view of utilizing the water of the Gandak river. Also surveys had been begun in Nuddea, which might lead to the formation of a canal, often talked of, to be led from the Ganges near Rajmahal, perhaps as far as Calcutta. A project was well advanced for a canal from the Damúdáh to serve as a navigation and irrigation work, and communicating between the coal district at Ránígánj and the Hooghly. Other designs on some of the other neighbouring rivers of this part of Bengal were also in hand.

The canal from the Soane, which was to have been carried out by the East India Irrigation Company, would probably be handed over to the Government for execution, and arrangements would be made for beginning it as soon as the negotiations with the Company would permit. The works of the same Company in Orissa continued to progress.

In the Central Provinces, an officer had been obtained from Madras for the special prosecution of irrigation works, and two promising projects were well forward, and might probably be in a fit state for submission to the Government of India for sanction in a month or two.

In Madras, the attention of the engineers had been specially directed to the preparation of projects for the completion of the great works connected with the anicuts on the Godaveri and Kistna. Portions of these had already received sanction, and the rest were expected soon to be sent up. Two very large tank works were in course of execution near Madras itself. A large project had lately been sanctioned for the extension of the irrigation from the Pennair river in the Nellore district.

A survey had also been carried out for a canal to turn the water of a river rising in the higher ranges of the Travancore mountains, into the plain of Madura. There were considerable difficulties to be encountered in the realization of this scheme, but it was hoped that they might be satisfactorily met.

Other projects of value were under preparation in the Madras Presidency, and important improvements in the Cauveri works were also contemplated.

In the Bombay Presidency, beginning with Sind, a very large scheme for a canal from the Indus at Roree, to irrigate the Hyderabad collectorate, was under consideration. Other projects were in hand for improvements of other existing canals in that Province.

In Guzarát, a project for a canal from the Taptí had just been sent up for sanction by the Government of India, and another project was believed to be in preparation for another valuable work.

In Khandeish, one work of importance was already in operation, and the engineers were employed in preparing for its extension.

In the Deccan there were numerous projects in various stages of progress, and several new schemes of magnitude almost ready for final submission to Government.

Lastly, in Mysore, additional vigour had been given to the progress of irrigation works, and it had been proposed to apply a large sum from the accumulated surplus revenues, in excess of the annual grants from current income, to the prosecution of these works.

To strengthen the hands of the Government in respect to engineers for employment on the new works which would soon begin to be ready for execution, the Secretary of State had, at the urgent request of the Government of India, sent out to this country thirty civil engineers of experience, the greater part of whom had already arrived, and would be immediately distributed among the Local Governments, where their services were likely to be most needed. Increased numbers of young officers would also be appointed by the Secretary of State in the course of the coming year, so that it was hoped that no further difficulty of importance would be met with from this quarter.

Generally, it might be affirmed that the Government of India had taken all necessary steps to inaugurate the policy of extending irrigation to the utmost. It had already established, in every Province, a separate head to the Irrigation Branch of the Public Works Department, and would be ready to consider favourably every proposal having in view the improved administration of this class of works. It was the peculiar duty of the Government of India to see that all proper precautions were taken to prevent the hasty or wasteful application of borrowed money to new works; and at the same time to provide all

needful funds for the prosecution of works of ascertained utility and satisfactory design; and till the present time, it was believed that no question had arisen as to the manner in which these duties had been performed by it.

His Excellency hoped that statement would be as satisfactory to the Council and the public as it was to himself. While he considered it of paramount importance that they should not forego any portion of the revenue which they now had, it was not only because he thought that money would be really wanted, but he also wished to affirm and maintain the principle that it was right, and proper, and reasonable, that they should attempt to inaugurate something like a system of direct taxation—a system which would include those who owed much to the Government of this country for the peace and security and order which were maintained, and which enabled them to pursue their occupations and professions with advantage to themselves. His Excellency had heard it said by one gentleman that it was unfair to tax our countrymen, who were expatriated in India, and who were employing themselves in increasing the wealth and capital of the country. Another gentleman said that it was very hard and unreasonable, and even unjust, to tax Government officials. His Excellency not only thought that it was fair and reasonable and right to tax all such classes, and that everybody in proportion to his means should bear a fair proportion of the burdens of the State; but he thought, as a matter of honour and duty—and he believed that there were few of his countrymen who would not regard it as a matter of honour and duty—that European residents should bear a relative proportion of the taxation of the country. It was a remark of the late Mr. Wilson, in which His Excellency heartily concurred, that taxation should be so arranged, and especially new taxation, that the European community should bear a fair proportion of it with the Natives of this country; and he could not see a stronger argument or stronger ground in the minds of the Natives for objecting to new taxation, than that the European was in any degree favoured in its distribution.

The Hon'ble Mr. Shaw Stewart said, by the 35th the Bill the Local Government was empowered from time to time, with the previous sanction of the Governor General of India in Council, to make rules consistent with the Act for the guidance of officers in matters connected with its enforcement. There were three points in the Act regarding which he would suggest that rules should be made. First, with reference to the 15th section of the Bill. The Select Committee had inserted in that section a valuable provision that when, on an appeal, an order for a refund was made, the amount of the stamp-duty, together with the whole sum or excess paid by way of tax, should be at

once refunded. The object of that provision was to obviate the delays and difficulties now experienced in obtaining refunds. He trusted it would be found possible to make such rules as would admit of the Collector having always on hand a sufficient sum of money for refunds.

The second point referred to the 32nd section. A good deal of discussion had arisen in Committee in regard to that section. It was ruled that persons should be liable to be taken before a Magistrate only after a notice had been duly served on them. There was some debate as to the manner in which that notice should be served. He trusted that the Government would make rules that such service should be as effective as possible, and that, whenever it was practicable, the notice should be served personally.

The third point related to the 20th section, which provided that prosecutions should only be instituted at the instance of the Collector. But by the 31st section, the Local Government was empowered to confer all or any of the powers and duties of the Collector on any other person.

MR. SHAW STEWART thought it very undesirable that any person so invested should have the power of instituting prosecutions under the Act. Under the Stamp Act, no prosecution could be instituted without the actual assent of the Collector of the district. He thought it expedient that no person except the Collector himself should institute any prosecution under the Act. Otherwise we might have, in out-of-the-way districts, a number of prosecutions commenced by sub-divisional officers.

If the Hon'ble Mr. Skinner had persevered in his intention, MR. SHAW STEWART would have been at some loss to know which way to vote. On the one hand he thought we must come to an income-tax sooner or later, and on the other hand, the Executive Government had maturely considered the subject, and, with far better means of judging, had decided on its course. He thought no one could have attended the meetings of the Select Committee without seeing how difficult it was to devise an approximately perfect scheme of direct taxation without proceeding on the principle that the tax should be levied, not by arbitrary assessment, but on returns made by the tax-payers themselves. The principle of calling for returns had been put on one side; we had raised the tax as well as we could, but he thought it would be surer and better to ask the people to return their own incomes. How would it be ascertained whether the profits of a firm were below or above two lákhs of Rupees, or above four lákhs? To ascertain that would be a matter of great difficulty. If you said that the Collector would do that as well as he could, then you admitted that it was impossible to arrive at such information without returns.

The Hon'ble MR. CROOKE said that the Bill before the Council seemed to him to be not founded on true principles; for when it was attempted to redress some of its grievances, then an equal default appeared in some other part of it. As the Bill now stood, a firm earning about enough to maintain its partners in decent comfort would have to pay as much as a Company distributing large dividends to wealthy shareholders. This tax had been compared with the Home Licenses; but MR. CROOKE thought that those were imposed rather for the purpose of controlling and limiting persons dealing in articles specially objects of taxation, or else of intoxicating qualities. It would certainly create great surprise to the frequenters of the Exchange at Home if they were required to produce a certificate for plying their vocation. He was no advocate for an income-tax unequally levied, but he thought even such would be better than this measure, inasmuch as the default would lie with the people rather than with the law.

The Hon'ble MR. COCKERELL said, he had some amendments to propose, but—

The Hon'ble MR. MAINE observed that amendments should be moved afterwards. The motion now before the Council was that the Report of the Select Committee be taken into consideration.

The Hon'ble MR. MINCHIN said that while, on a measure of this nature, which carried out the financial policy of the Government, the Additional Members of the Council were precluded by their official position from anything approaching to factious opposition, they would ignore the reason of their existence if they were to pass it in silence, without offering to subject it to temperate but fearless criticism.

With reference to a measure of this kind, he was of opinion that the Executive Government as a whole, and the Finance Minister in chief, were responsible for the principles, while this whole Council was responsible for the details, of the Bill, for the machinery by which the financial policy of the Government was to be carried out.

With reference to the policy of the Bill now under consideration, it was avowedly a continuation of a system of taxation introduced last year, which appeared to have been unpopular to an extraordinary degree amongst an important section of the community, and yet, in principle, it seemed to him not unsuited to the country at large. He had had no practical experience of the working of the license-tax, having been out of India since it was passed; but he had to carry out the late Mr. Wilson's income-tax in a district extending over seven thousand square miles, in half of which he had to make his own

assessments, and in the other half he had to revise on appeal the assessments made by his subordinates. He had therefore a thorough acquaintance with the working of that Act, and was convinced that one more unsuited to the condition of this country was never forced upon the people.

That Act was founded on a system of requiring returns of income from every individual supposed to have £20 a year and upwards. Those returns were of the most complicated nature, and the very sight of them was hateful to the Natives. Their general cry was, "make us pay what you like, but spare us these returns." In his own district, which stood about seventh among all the districts in the Madras Presidency as to the amount of income-tax collected, he believed, speaking from memory, there were not two traders' returns sent in acknowledging an income of £50 a year. He had examined in his time cart-loads of those returns, and soon came to the conclusion—he spoke of returns made by Native traders—that they were mere waste paper. The system of arbitrary surcharge was not the exception, but the necessary rule. Without it, the tax would hardly have produced, in his district, £10 a year, independently of official incomes. No revenue officer could look back at his proceedings under that Act without wondering at his own audacity. He had to act as if gifted with omniscience, and declare the exact amount of income of hundreds of persons, of whose affairs he really knew very little, ranging from £20 to £1,000 a year. He did not think in his district he ever ventured higher than the latter sum. To ensure the correctness of those arbitrary assessments, the people had the right of proving, if they could, or if they chose, that the surcharge was wrong. But, in his experience, they rarely did so. Of course, in almost every instance they appealed against the first assessment; but when called on for proof, the universal reply was that to produce such was impossible. Only one case did he remember, where an indigo manufacturer, whom he had assessed on an income of £30 a year, produced his accounts. He was a Mussulman, and he remembered his proving to him fairly that he had worked the business at a loss, and his tax was remitted. Traders, as a rule, would not produce their accounts; they preferred to pay the demand rather than submit to scrutiny.

The result of as intimate and practical an acquaintance with the working of Mr. Wilson's Bill as any man in India could have had, had convinced him that last year's License Tax Act, with all its imperfections on its head, was far more suitable to the people of this country. It called for no returns; it permitted no scrutiny, unless asked for on appeal; and arbitrary as its provisions were, and unequal as must have been the result of the taxation under it, he

had no doubt that it created far less annoyance to the Natives, and was generally less obnoxious to them, than the Income Tax Act, with all the cumbrous English machinery imported with it. As far as the Natives of this country were concerned, he concurred heartily with the policy of the Right Hon'ble gentleman, who had deliberately preferred the inequalities of this system of broad classification, to the theoretical fairness of a professed income-tax, coupled as that was with a harassing scrutiny into private affairs, and carried out, as in this country it must be, with equal arbitrariness, though with greater pretensions to accuracy.

But, there was one section of the community, numerically weak as compared with the Natives, but powerful in their energy and their influence, with whom this tax was essentially unpopular, who used the acknowledged inequalities of the license-tax system as a vantage-ground for attacking it, and who would never accept the lightness of the general incidence as any answer to those inequalities of which they complained. In the present Bill a slight concession had been made to this feeling; and, with regard to the official classes, the system of classification had given way, and in place of it an income-tax had been imposed. In Committee, this concession, for such he thought it was in English eyes, had been extended to all who drew fixed salaries from Companies; it had been extended, in fact, as far as the Right Hon'ble gentleman in charge of the Bill considered safe, to all concerning the amount of whose income there could be no doubt, and in the realisation of the tax imposed on whom there could be no difficulty. But MR. MINCHIN thought that the natural wishes of the English part of the community on this point might be met without making the system unsuitable to the Natives. As there appeared every prospect of this tax becoming permanent, he would suggest for future consideration the advisability of so far modifying this measure, as to convert it into what he might call an optional income-tax. He was quite opposed to the demand for compulsory returns, which was the most obnoxious feature in the late Income-Tax Act; but he would give an option to the public of submitting returns, if they chose to do so, within a certain date, and if the returns given in by any individual appeared to the Collector to be *bonâ fide* honest returns, he would allow that individual to be charged upon his income at the same rate as might be charged on official salaries. If, on the other hand, the Collector were of opinion that the returns sent in were false, he would have the power of surcharge granted by the Income-Tax Act. But instead of having to exercise an absolute omniscience, by pronouncing the exact income, in his opinion, of the party surcharged, he would work on the machinery of this Bill, and require him to take out a license according

to the classifications of the schedule. He thought that, in that way, the present Bill might be modified so as to work in the manner most suited to each section of the community, and might be applied by the Government to any class of income which it might be determined to bring within its operation. He came to the strongest argument brought forward by the opponents of this measure, the fact that it did not go far enough, that certain classes were unfairly exempted from its scope. No argument could be brought forward that would satisfy a man paying a tax on his profits from a trade or a profession, why another man who made an equal profit from landed property should go free. The official, with a precarious income dependent on life and health, would not easily admit the reasons that excluded from the tax the certain income derived from funds or other property. The objection was founded on the Anglo-Saxon's hatred of all that he considered unequal dealing. But Fortune did not always bestow her favours fairly; in the rubber of life, they could not all hold honours; in the race of life they could not all win, and they must accept the unequal dispensations which Providence and Governments bestowed. For his own part, he could never support any proposal framed with the object of bringing under taxation classes whom the Government had thought it advisable to exempt. In such matters, Government must have the best information, and should be able to form the best judgment; and he had no sympathy with that selfish feeling which made a man believe his own burden to be lightened, because he saw a like clapped upon his neighbour's back. This Bill would enable Government to bring under its taxation any classes it might choose in its own good time, and he saw no reason to urge it upon this course.

He passed now from questions of principle to those of detail, for which, as he said before, this Council might be considered wholly responsible. There were two provisions contained in this Bill which he must frankly state he did not view with favour. His objections in Committee had a fair hearing, and, like all Englishmen under such circumstances, he could only bow to the will of a majority, and he did not consider his difference of opinion on these points any reason against his signing the report of the Committee recommending that this Bill should pass. The first point of detail which he could not approve, was the system which insisted on the payment of the tax previous to any permission to appeal. The plan of enforcing payment first, and enquiry afterwards, did not approve itself to him. In an arbitrary assessment of this nature, there must unquestionably arise cases of hardship, where a party had been classed too highly, and where it might be of great inconvenience to the sufferer to pay the full demand before he could apply for a hearing of his case. The Collector, upon enquiry, might often find that he had fallen into error, which he would

be glad of the opportunity to rectify; and he (MR. MINCHIN) would be pleased if this anomaly were removed, and the ordinary principle that regulated the collection of the State revenues were applied to this taxation—the fair settlement of the State demands in the first instance, and their due collection afterwards.

The other point of detail to which he objected was the mode of collection by means of the Magistrates. He had always been opposed to this provision of the Bill, and had been answered by what was, he believed, the English feeling on the subject, that the interposition of the Magistrate was a protection to the public. In the presidency towns, certainly, the Magistrate, and the Collector under this Bill, would always be separate officers, and if anything like scrutiny into the merits of the case were intended on the part of the Magistrate there would be a protection to the public. But he fully agreed that, to make the Magistrates Courts of Appeal as to the correctness of the assessment would be very objectionable: but when, as they were compelled to do, they laid down that the Magistrate was to have no option; that on proof of due service of notice he was bound to inflict a penalty for non-payment in twice the amount of the assessment, it was a mockery to talk of that as a protection; the Magistrate was simply used as a powerful screw for the collection of the revenues of the State. If he shared the opinion of his Hon'ble and learned friend Mr. Maine, that "the Courts in fact were, in one great province actually, and in others potentially, an engine of cruel oppression," he would not at all object to their being turned to some useful purpose; but as he believed nothing of the kind—nor did he think that, in his heart, his Hon'ble friend believed it any more than he—as he believed that the Courts of the Magistrates were a real protection to the people from wrong and from oppression, he regretted to see this work put upon them. He believed it to be quite unnecessary. He believed that this system in last year's Act arose from its being the mode provided in an old Bill for the collection of a license-tax as part of municipal revenue. But a mode of collection suitable enough for municipal purposes did not appear to him equally proper for the collection of the revenues of the State, which should, he thought, always be realised by the ordinary revenue law. It was true that the Bill, as amended in Committee, allowed the use of the revenue laws for collection outside the limits of the presidency towns, but recourse to the Magistrates formed the main provision of the Bill, and whatever English practice might be, he thought that, in India, those officers should not be employed in such a manner.

The Hon'ble MR. COCKERELL was about to say, when he was interrupted by the Hon'ble Mr. Maine, that he had some amendments of mere

detail to propose, but that, before proceeding to move them, he wished to offer a very few remarks on the general principles of the Bill. The debate which ensued on the introduction of the Bill had an effect on him different from what it had on the Hon'ble Mr. Skinner, for it went to convince him (MR. COCKERELL) that the expenditure entered in the Financial Statement under the head of "Extraordinary Public Works" was in all probability of an equally, if not more, certain permanent duration than any source of revenue except land. It seemed clear that they were entering on a course of a yearly increasing outlay of no inconsiderable magnitude upon public works of a non-reproductive character, the termination of which was so indefinitely remote that they would not be justified in shifting the burden of ultimately bearing any portion of the present necessary expenditure on this account from the tax-payers of the present day to those who came after them, and who, in this view of the enduring nature of these extraordinary charges, would, in their time, have to bear their share of the burden which those charges imposed. In accepting that conclusion, which he had come to after listening to the very clear statement of the Hon'ble Mr. Strachey, he was decidedly of opinion that direct taxation in some shape or other was not only fully justified but absolutely necessary. That did not, however, altogether remove his original objection to this Bill, which rested partly on the fact that it involved direct taxation of a partial character; that certain important classes, whose material prosperity was due, no less than that of those who would be affected by this Bill, to the advantages resulting from a sound administration, were altogether exempted from the taxation which it imposed—he alluded, of course, to the owners of property in houses and land. His Excellency had stated that, in his opinion, the land-holders of India generally had already their burdens of a heavy nature in respect of contribution to the imperial revenue. Of course, to His Excellency's vast knowledge and experience of the circumstances of many provinces of this Empire, he (MR. COCKERELL) was ready to defer; but he thought he might be permitted to say, with regard to those who were possessed of property or interest in land in the Province in which the experience of his official career had been gained, that that was decidedly not the case; and it was in the capital town of that Province—here in Calcutta, where there was a far larger community of European British subjects than in any other part of the Empire—that the partial character of the present Bill was, from the very fact of its seemingly ill-grounded partiality being brought thus, it might be said, into close contact with them, viewed with such strong disapprobation by the community. He meant that the land-owners, and those holding interest in land in Bengal, were in even more favourable circumstances than were those on whom this Bill would directly fall, and yet they were wholly exempted from its provisions. His

Excellency had certainly stated that he trusted that His Honour the Lieutenant Governor of Bengal would be able to induce the landed proprietors of those Provinces to agree to bear some special form of taxation for expenditure on local improvements. MR. COCKERELL hoped that His Excellency's expectation would be realised; for his part he must say he had not much faith in the prospect of any material aid being obtained from that source through mere voluntary action; and in any case, seeing that no scheme for the voluntary taxation of this class was as yet matured or even approximating maturity, it did seem to him that it could not be realised within the period of the immediate operation of the Bill, that was to say, within the period covered by the Budget recently under discussion, for the income of which the taxation imposed by this Bill was designed to make provision. Considering that the landed interest had, on insufficient grounds, been relieved from its due share of the public burden of direct taxation, he had sought in Committee so to amend the provisions of the Bill as to deprive it of its expressly exclusive character in regard to the classes above mentioned. He had endeavoured to induce his Right Hon'ble friend, the mover of the Bill, to consent to the striking out of the clause which created a special exemption in favour of the cultivators of land who did not keep shops or factories for the sale or manufacture of the produce of the land. He felt that, here at least, the assumption that the landed interest did bear a large share of the taxation could not hold good. For what were the classes to be exempted? Not the mass of ryots and small tenantry, who paid a fair amount of rent for their holdings, for they would in any case be protected by the general exemption which precluded the imposition of the tax upon any person whose annual profits were less than Rs. 500. They were for the most part persons holding land either rent-free or at a mere quit-rent, all cultivating vicariously, and all persons of practically abundant means, and on whom, it would be thought, this taxation might very justly be imposed. He regretted exceedingly that the Right Hon'ble Mr. Massey was not disposed to accept that class as a fit subject for taxation; he nevertheless agreed with the Hon'ble Mr. Minchin that, if it was not the policy of the Government to include that class in their scheme of taxation, it was not the business of the Members of this Council to press that policy on the Government, otherwise than in the nature of advice. But he (MR. COCKERELL) did think that much of the unpopularity, which undoubtedly attached to a Bill of this kind, would have been avoided if the classes to which he had referred had not been exempted. He thought that the dislike to see any person exempted from any particular burden or obligation, which in the ordinary nature of things

should properly fall on all alike, was a feeling common to human nature; that the dislike to special and inequitable, because groundless, preferences and distinctions was inherent in our childhood, and increased with our growth to man's estate; and he apprehended that it was in a great measure from this feeling that the unpopularity of the present Bill, no less than that of the Act for which it was substituted, derived its existence.

The Hon'ble MR. SKINNER wished to say a few words in reply to an observation from His Excellency on the apparent discrepancy between his remarks on this occasion, and those he had made in the debate of the 20th March, when comparing a license with an income-tax. The essential difference between the two appeared to him to consist in that the former dispensed with the system of returns and the inquisitorial process which this involved, and in that sense he considered the present measure to be, as he stated before, one degree less obnoxious than an income-tax. But he had no idea of expanding the Bill before the Council into an Income-Tax Bill. His object in the amendments he had contemplated was simply to extend the provisions of the Certificate Bill so as to bring the landed and funded interests within its operation. He had been told that such a change would necessitate the introduction of the cumbrous machinery required for the working of the Income Tax Act; but to his humble judgment it did appear strange that it should need greater ingenuity to reach the land and fundholders than was necessary to levy a tax on the professional classes.

The Right Hon'ble MR. MASSEY said the Hon'ble Mr. Skinner considered himself at a disadvantage in being precluded by His Excellency the President's decision from moving the amendment of which he had given notice. MR. MASSEY thought His Hon'ble friend had not quite correctly stated the disability under which he laboured. The terms of the statute to which he referred were not in dispute. He believed his Hon'ble friend himself admitted that his motion had reference to the public revenue. The only question was whether His Excellency had properly exercised the discretion vested in him. The Hon'ble gentleman said he did not desire to convert the Bill into an Income Tax Bill. As far as the present question was concerned, it was immaterial to contest that point. What his Hon'ble friend avowed himself desirous of doing was, to extend the Bill to other classes of the community, and therefore his object clearly came within the provisions of the statute, which prohibited any Member of the Council from making any motion affecting the public revenue and the public burdens without the leave of the representative of the Crown. Now, that was not a law peculiar to the proceedings of this Council. The provision was taken from parliamentary law and practice. It was a fundamental

and invariable rule of the House of Commons, that no motion to impose burdens on the people should be submitted to the consideration of Parliament except on the recommendation of the Crown;—in other words, no measure of taxation could be proposed except on the responsibility of the ministers of the Crown. If, therefore, His Excellency the President had thought proper to exercise the discretion vested in him in the Hon'ble gentleman's favour, His Excellency would have conferred on him and the Council a power of dealing with the public revenue which was not enjoyed by the representatives of the people in Parliament assembled. It would not be expected of him (MR. MASSEY) to vindicate a rule which had existed from time immemorial, a custom which had been appreciated by successive generations, which was most jealously guarded by the House of Commons, and which no one acquainted with parliamentary usage, and with the complications and difficulties that would result if it were in the power of any person of any party to tamper with the revenue, would desire to modify. Therefore, when it was the pleasure of Parliament to constitute this Council, one of the principal provisions introduced into the statute regulating its constitution and practice was this, which precluded the Council from entering on any subject which it was not competent for Parliament to entertain unless introduced by the responsible ministers of the Crown.

It was possible that MR. MASSEY might be asked what power was left to the Council of dealing with questions of financial legislation? His answer would be that we had the same power in that respect which the House of Commons had. It was true the Council, like the House, could not directly impose taxes; but it might, by refusing to pass measures of taxation, indirectly influence the policy of the Government. But the decision of the House of Commons, even when they rejected the financial measures proposed by the responsible ministers of the Crown, was not final. There was a power of appeal from the House of Commons to the constituencies; and it had happened before, and would happen again, that the opinion of the people had reversed the verdict of the House. But there was no such power in this country. If the Indian legislature decided against the policy of the Government, His Excellency the President could not appeal to their constituents, because they had none. That was a reason why members of this Council should be most careful and guarded in committing themselves to a course hostile to the policy of the Government. MR. MASSEY did not say that that should in any way preclude Hon'ble Members from exercising the most rigorous criticism; but still, it was a reason for pausing before putting the Government in a position of embarrassment. He admitted that it was the duty of the Government to consult the opinion of this Council, and, as far as possible, to accommodate its

measures to their views. With that explanation of the grounds which induced His Excellency to refuse permission to the Hon'ble Mr. Skinner to introduce his motion, MR. MASSEY would pass on to some other observations.

The Hon'ble Mr. Skinner last week announced his intention to oppose the passing of the Bill before the Council. He had, as MR. MASSEY understood him, departed from that policy to-day, and instead of asking the Council to reject the Bill, he would, if it had been in his power, have asked the Council to extend its provisions to other classes, without, as he averred, converting the Bill into an income-tax. MR. MASSEY must compliment his Hon'ble friend on his ingenuity. He had endeavoured to show that his amendments would not have the effect of converting the Bill into an income-tax, simply because the machinery of the income-tax was not to be brought into operation. But it was quite a subsidiary question whether you assessed incomes arbitrarily or by means of returns. The Council had heard one Hon'ble Member who objected to arbitrary assessment, and thought that that system should be discountenanced, and that the only fair mode was to require persons to make returns of their income on which they should be assessed and taxed. On the other hand, Mr. Skinner and Mr. Minchin were opposed to the requirement of returns. Mr. Minchin had given the Council the benefit of his experience with regard to the working of the Income-Tax Act. That experience was corroborated by all MR. MASSEY had heard, and he might appeal to his Hon'ble colleague Mr. Strachey as to the great difficulty, almost amounting to an impossibility, of collecting the income-tax by means of returns. It was said that, although the Native community were willing to submit to arbitrary assessment, it was antagonistic to the feeling and high spirit of Europeans. But it must be remembered that Europeans were only a handful to the population of the country. We might, therefore, fairly expect from the public spirit of our countrymen, and their sympathy with the Government, that they would yield something of their own objection to arbitrary taxation. He must confess that one strong recommendation of the present measure was that it steered clear of returns. If we resorted to the income-tax, one undeniable difficulty would be the necessity of requiring returns; but even under the income-tax, he would apply that principle only when you had to deal with people of that position that you could hardly expect them to submit to arbitrary assessment. He would remind his Hon'ble friends who objected to the principle of arbitrary assessment that, even in this Bill, it was not of a positive and inflexible character. If a person considered himself unfairly assessed, there was a process by which he could make a return: he could go to the Collector or Commissioner; he might show him the state of his affairs, and might say, "tax me according to the state of my affairs which I expose to you, and

do not tax me arbitrarily." Then, if the Collector or Commissioner was satisfied of the truth of the representation, he would tax the person on his own return; but considering the lightness of the assessment, and the character of the persons who would be employed in carrying out the Act, MR. MASSEY did not apprehend that this privilege would be often resorted to, neither did he believe that much oppression had been exercised in administering the law. He had before him independent evidence on this subject. He referred to the opinion of a body of gentlemen calling themselves the British Indian Association. It was in the nature of an admission by persons who were on the whole unfriendly to the tax. But this was what they said with regard to the working of the law:—

"As a measure of direct taxation which is notoriously repugnant to the feelings of the people of this country, its working during the past year shows that it has the rare merit of being attended with a minimum of oppression, while its financial results have exceeded expectation."

That was the result of the testimony of gentlemen whose opinion on such matters was entitled to some weight; it was spontaneous testimony on their part, on a point which had been much discussed and which had caused the Government great anxiety. If there was one thing more than another which the Government wished to avoid, it was that of raising a revenue by means painful to the feelings of the people. He would not pretend to say that, under the system of arbitrary assessment, some irregularities and oppression might not take place; but as far as he had information, this tax had been collected with moderation, and had not resulted in anything which could be called systematic oppression. With a view to avoid that particular incident of taxation, we had removed from the operation of the Bill the class of tax-payers who, under the existing law, might more than any other class be open to oppression; we had entirely dismissed those whose profits were under Rs. 500.

He would shortly advert to two or three remarks which had been made on the details of the Bill. His Hon'ble friend Mr. Cockerell had complained that land-owners were not included in the Bill. But His Excellency the President had shown that, in many parts of India, land-owners were not in a favoured position. New assessments had been made, and although the principle on which those assessments were adjusted was one of equity and moderation, yet they involved no sacrifice of the just demands of the Government. In addition to those assessments, the land-holders in Bombay, the North-West Provinces, and the Panjáb were subject to local cesses for roads and education. Those assessments were not inconsiderable; they were not so large as the local charges to which the owners of property in England were subject; but they were charges of

a substantial nature, and were not likely to decrease. The policy of the Government had been asserted, that some stop must be put to defraying from imperial revenue the wants of localities, and that those wants, such as roads, education, and, generally, requirements of a local character, were to be provided by those who required them,—that was, that the local resources of the country must be looked to to provide local wants, and not the resources of the Government. The Province of Bengal was in somewhat an exceptional condition. In the early establishment of the British Empire in India, it had been found convenient to conciliate the land-owners of the country, and we entered into a settlement with them to pay a certain amount of land-tax in perpetuity. That Permanent Settlement had proved much less onerous than the new settlements; but it was a contract; and MR. MASSEY had never heard, and he hoped he never might hear, of any policy inconsistent with the faith which had been pledged. But although we could not specially tax the land-holders of Bengal for imperial purposes, yet there were modes by which they could be justly required to contribute towards the finances of the country. But Mr. Cockerell thought there was an element of inequality because the Bengal cultivator was not subject to the provisions of the Bill. Did the Hon'ble gentleman suppose that the assessment of the cultivator had anything to do with the taxation of the landlord? The ryots in Bengal were not in a better position than cultivators in other parts of the country. If we taxed the cultivator, we did not reach the land-owner, but we diminished the profits of a man who was not a fit subject for taxation.

The Hon'ble Mr. Minchin had adverted to another point. He said it was detracting unduly from the power of appeal conferred by the Bill, if we exacted payment as a preliminary condition. But MR. MASSEY very much feared that, if we relaxed that condition, we should encourage persons to institute false appeals. If a man desired to appeal, he should be prepared to show by first paying the tax that his appeal was an honest one. Mr. Minchin said that it might be inconvenient at that moment for the person to pay the tax. MR. MASSEY was afraid that in every country it was inconvenient to many people to pay the demands of the State. We knew that, even in England, the revenue could not be collected without inflicting hardship. This was inseparable from any system of fiscal administration. You could not govern a country on the principle of compassion and concession to those who, from circumstances of adversity and difficulty, were unable to satisfy the just demands of the State. His Hon'ble friend had also objected to the jurisdiction conferred on Magistrates for enforcing payment of the tax by means of fines. Was he aware of the extreme rigour with which excise laws were administered in Eng-

land? They were enforced by a series of penal enactments imposing fines of large amounts, which must be paid without abatement on peril of immediate imprisonment of the defaulter. From his own experience in the early portion of his official career, when he held a small judicial office, MR. MASSEY had known how oppressive in some instances was the extreme rigour with which the Excise Acts were worked; and it had been his duty, in some instances, to forward representations to the proper authorities for relaxation in favour of particular individuals. If we attempted to collect our revenue on a principle of indulgence and concession, we should encourage a system of fraud which would not only demoralize the people, but injure the revenue.

The Hon'ble Mr. Skinner had endeavoured to involve the Council in a discussion on the comparative merits of the income-tax and the license-tax. MR. MASSEY had not one word to say against the income-tax; it was a tax which might be resorted to when the circumstances of the country justified its imposition: all he maintained was this, that the income-tax should not be imposed when the revenues were in a flourishing condition; and therefore, without committing the Government to any opinion against the imposition of that tax when necessary, we had thought it sufficient at present to ask the Council to agree to this modified tax. His Hon'ble friend asked him why landholders and fundholders were exempted? Could his Hon'ble friend have been serious? Was MR. MASSEY again to repeat that, at present, the landed proprietors contributed nearly one-half of the revenue of the country? But what did the trader pay? He paid nothing; and that was the justification of the Bill. The trader was a very valuable member of the community; he had been encouraged by the policy of every civilized Government. But he was a very expensive member of the community. In order to enable him to carry on his business, large provision had to be made by Government in the shape of public works of great magnitude. You must have roads, canals, harbours—things that involved the country in enormous expenditure. What had been the policy of England and other countries which had desired to encourage commerce? One of the earliest classes that were subjected to taxation were traders. Long before the income-tax was thought of, traders had been taxed. MR. MASSEY could show his Hon'ble friend a long list of professions and trades, covering more than four pages of the paper before him,—upon which duties taking the form of a rough income-tax had been imposed. Professions and trades had been subjected to special taxation long before the income-tax was thought of. They were assessed to license-taxes in addition to the income-tax, and they would continue to be so assessed when the income-tax should be repealed, if ever the repeal of that tax should take place. Let him ask his Hon'ble friend what objection

could there be to a tax on trades here, that would not equally apply to the tax in England? He could assure his Hon'ble friend that this was not a question between the income-tax and the trades' tax: they had before this, as the Council were aware, been considered conjointly, and when the Government resorted to the income-tax, it would probably be imposed in addition to the trades' tax. MR. MASSEY had said before that the tax was a very light one; the maximum assessment would be one and a half per cent., the mean incidence would be about one per cent.—and that was a tax which his Hon'ble friend desired to share with other classes of the community which already bore their share of taxation.

His Hon'ble friend would include the fundholder in his scheme of taxation. But he need hardly remind his Hon'ble friend that the public creditor stood on very different ground from other classes as regarded taxation. When the income-tax was first imposed, the right of the fundholder to exemption was confidently asserted; but it was answered, not without reason, that at a time when the existence of England as a nation was in peril, the fundholder had as great an interest in the maintenance of her independence as any other class. But under ordinary circumstances, it was difficult to maintain that the fundholder had an equal interest in the good government of the country with other classes. The landholder and the trader were immediately concerned in everything which promoted the prosperity of the country. But how did the fundholder benefit by roads and schools and hospitals and jails? What claim had you on your creditor to aid you in providing these things? So long as you paid him his dividends he had no further claim upon you. If it was necessary for the maintenance of public credit that a comprehensive scheme of taxation should be adopted, everybody who owned property under the protection of the State must contribute; but no argument could be justly urged against the present tax because the fundholder was exempted. If he might presume to say so, His Excellency the President had so fully vindicated the policy of the tax and the policy of the Government—a policy which involved large expenditure and which might lead to still heavier claims on the Government—that the Council would come to the conclusion that the Government had not been exorbitant in asking so small an addition to its resources as this tax would produce.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in place of clause 2 of section 3, the following be inserted:—

"(2). Non-Commissioned Officers and Privates of either of the said forces whose pay and allowances do not exceed Rs. 6,000 per annum."

The class of officers and persons referred to were of course exempt so long as they remained in the army, but, after long service, looked forward to receiving employments of a special nature. Those employments were either civil or military. In military employments, such as the Ordnance and Commissariat, they would, under the clause as it stood, be exempted. But when they entered into a Civil Department, such as the Public Works Department or the Medical Department, they would not come under the exemption and would be liable to pay the tax. The condition of persons of that class employed in Military and Civil Departments was nearly the same; their duties in civil employment were often of a more onerous nature than in military employ, and they had quite as good a claim to exemption as the others. He was therefore much obliged to the Right Hon'ble Mr. Massey for the readiness with which he had accepted this amendment, which would remove a just ground of complaint against the Act on the part of a numerous class of deserving and hard-worked officers.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said he had a series of amendments to move on matters of pure detail, which he could move either separately or together as most convenient.

THE PRESIDENT having intimated that they should be moved together,

MR. COCKERELL continued—He might state for the information of the Council that, in all the amendments which he was about to propose, he had been in communication and consultation with the Hon'ble Mr. Maine, who entirely approved of them. He had not had the opportunity of consulting the Right Hon'ble Mr. Massey, but as they were pure matters of detail connected with the machinery for working the Act, he believed that there could be no objection to them. The first amendment was as follows:—

That the words "and 'defaulter' a firm making default under this Act," be added to section 1.

It was intended to provide for cases of default by partnership firms. The provisions of the Bill as presented by the Committee simply contemplated the prosecution of the firm before the Magistrate; but there was no provision in the Code of Criminal Procedure which applied to all places outside of the presidency towns, nor was there any provision in the Presidency Towns' Police Acts, so far as he was aware—he was certain there was none in the Calcutta Police Act—for levying fines from a firm as a firm. The following amendment seemed therefore necessary for the proper working of the Act:—

That the following clause be added to section 19:—

"In the case of a firm the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm which may

be found within his jurisdiction, and (if the firm has not sufficient property within such jurisdiction whereon to levy the fine) of any moveable property belonging to the members of the firm, or any of them, which may be found within the same jurisdiction."

The next amendment was in section 32, and was as follows :—

That the words "is dwelling, or, in the case of a firm, in which the business thereof is ordinarily carried on," be substituted in section 32 for the words "or, in the case of a firm, in which any member thereof is dwelling."

The object of this amendment was to provide for posting of the notice, in the case of firms, where a personal service was impracticable. There might be a difficulty in finding the place of residence of the members of the firm, but the place of business of the firm must be known and could always be found.

The next amendment was that the following new section be substituted for section 33 :—

"When any Company such as is mentioned in section 22, or any person, has several places of business in the territories subject to different Local Governments, the Governor General of India in Council shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be the principal place of business, and, when any such Company has several Agents or Managers, which of them shall, for the purposes of this Act, be deemed to be the principal Agent or Manager.

When any such Company or any person has several places of business in the territories subject to a single Local Government, such Government shall have power to declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

The powers given by this section may be delegated to and exercised by such officers as the Governor General of India in Council or the Local Government, as the case may be, shall from time to time appoint in this behalf."

This amendment was calculated to meet the difficulty that might be apprehended (indeed it had already been largely experienced in the working of the present Act) in dealing with persons who carried on business in different places. Under the present law, they made their returns wherever convenient, and it frequently happened that they made returns where they had the least amount of business and were not well known. It seemed desirable, therefore, that it should be left to the Government to determine what place of business should be considered the principal place of business for the purposes of the Act.

The last amendment was that the following section be substituted for section 35 :—

"The Governor General of India in Council may from time to time make rules consistent with this Act for the guidance of officers in matters connected with its enforcement, and may

delegate to any Local Government the power given by this section so far as regards the territories subject to such Government."

It was thought desirable to take the power of preparing and promulgating the rules to be framed under the Act from the Local Government, and confer it in the first instance on the Governor General in Council. As the Bill stood, these rules were to be prepared by the Local Government, but required the sanction of the Governor General in Council. The alteration was dictated by the consideration of the necessity of uniformity of practice on many points connected with the working of the Act by officers subordinate to different Local Governments in order to guard against loss of revenue. It would, moreover, be found more convenient in the case of those provinces in relation to which the Supreme Government stood in the place of a Local Government.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that the following clause be added to section 24:—

"In determining under which of the classes mentioned in the said schedule A any person holding any such employment and exercising, nevertheless, a profession or trade, shall be assessed, the Collector shall neglect the amount of the pay which such person receives in respect of his said employment."

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill to amend the Consolidated Customs' Act.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Right Hon'ble MR. MASSEY then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill be passed.

The Motion was put and agreed to.

TIMBER DUTY BILL.

The Right Hon'ble MR. MASSEY presented the Report of the Select Committee on the Bill to exempt Timber and Woods from Import duty.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Right Hon'ble MR. MASSEY then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned till the 3rd April 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 31*st March* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 3rd April 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART introduced the Bill to amend and consolidate the Law of Procedure in the Courts of Criminal Judicature not established by Royal Charter. He said that when the Bill was placed in the hands of the members of this Council, he attempted, by giving a detailed statement of the objects and reasons, to obviate the necessity of going into a tedious exposition of the subject on the present occasion. There were, however, a few points on which he had some observations to make.

Three alterations had been made in the Bill since the Statement of Objects and Reasons was drawn up, and these he would in the first place shortly describe. A clause had been added to section 2, with the object of enabling the numerous references to certain sections of the present Code, in Acts passed subsequently thereto, to be read as if made to the corresponding sections of this Bill. Perhaps it would be found desirable, when the Bill was considered in Committee, to make this more definite, and to print, in brackets, beside the number of each section of the new Code, the number of the section of the present Code to which it really corresponded. The second point was the

definition of the local limits of a High Court, which was required in consequence of the difference between the local limits of the Supreme Court and those of the new High Courts. The third point was the omission, from chapter XXIV, of any reference to Subordinate Judges in the Presidency of Madras, a class of officers now, he was informed, disused. If the Government of Madras had any objection to the omission of the Subordinate Judges, it would doubtless communicate its view on the subject. For these three alterations, and for many minor suggestions, he was indebted to the Assistant Secretary, to whom also his acknowledgments were due for the improvements in the form of printing the Code, which would render it more intelligible and easy of reference.

The points noted in the Statement of Objects and Reasons to which he would now shortly refer were very few.

In section 5 of the new Bill, he had added words which would enable the Local Governments to delegate to Commissioners or to the Magistrate of the District the power of appointing subordinate Magistrates. These subordinate Magistrates were for the most part Native revenue officers, whose appointment as such vested in the Collectors, and their investment by the Local Government with magisterial powers followed as a matter of course on their appointment as Tahsíldárs or Mámlatdárs. The official Gazettes were burdened with these notifications, and in many cases considerable inconvenience had been felt from the unavoidable delay of a reference to the Government for the investment of a temporary incumbent, or successor, with magisterial powers. By the amendment proposed, the Local Government would be able to authorize the same officer as appointed the Tahsíldár or Mámlatdár, to confer on him magisterial authority at the time of his appointment.

In reference to section 161 of the present Code (section 153 of the proposed Bill), numerous references had been received from various parts of India, pointing out the necessity of some more explicit rules for the direction of procedure in enquiries into sudden or unnatural deaths. It was vain to attempt to lay down general rules that would be suitable for all the provinces of India, in some of which the Police arrangements were so different from others. He had therefore confined himself to adding a few words, which recognized the necessity of this section being supplemented by rules and regulations to be made by the Local Government in a way adapted to the local requirements.

Section 218 was a new one, added with the view of meeting a difficulty pointed out by the High Court of Calcutta, which was shortly as followed. A lunatic could not commit an offence. If a person was charged before a

Magistrate with an offence triable by a Court of Session, and appeared on enquiry to have been insane when the act was committed, the Magistrate, by the strict letter of the law, could not commit him for trial, no offence, in its technical sense, having been committed. But it was undesirable that a Magistrate should have the power of acquitting a person charged with such an offence, or even of deciding on the question of his sanity or insanity, a question that ought to be left for the Court of Session. This section, which was framed in accordance with what he understood to be the opinion of the Judges of the High Court, would admit of the Magistrate committing the accused person to the Sessions Court. It had since occurred to him that it would probably be desirable to authorize the Magistrate to keep back the witnesses as to the offence, and to let the Sessions Court find merely on the question of sanity, leaving it to call for the other witnesses for the prosecution and defence if it should be necessary.

Sections 260 and 261 referred to a point of some difficulty. They were part of chapter XV of the Code, which laid down the procedure in cases punishable with not more than six months' imprisonment. One section of that chapter (section 255) clearly indicated that the personal attendance of the accused person during the trial might be dispensed with. It was therefore asked whether, in the petty cases coming under this chapter, the depositions of absent witnesses might not be taken at a distance, and recorded on the proceedings, and it was considered that this was desirable, but at the same time not clearly admissible as the law stood. He had therefore proposed, in section 261, to permit a Magistrate, when trying a petty offence under chapter XV, instead of summoning an absent witness from a distance, to send a paper of questions to the Magistrate in whose jurisdiction the witness resided, and to admit the answers to those questions as evidence.

He then came to section 267, which was part of the same chapter (XV). His Hon'ble friend Mr. Maine, in a recent speech on the subject of the Stamp Act, justified the imposition of an institution-fee of one rupee on all criminal complaints, by reference to the great number of frivolous and vexatious complaints in some parts of India, and said it was incumbent on those who disapproved of the stamp-duty to indicate some other way of checking such complaints. On a former occasion he had the honour of stating, on very good authority, that section 270 of the present Code (266 of the Bill) provided such a remedy if it were properly used. Under it, if any complaint of an offence triable under chapter XV, *i. e.*, punishable with imprisonment for not more than six months, were dismissed as frivolous and vexatious, the Magistrate might award the payment of amends from the complainant to the person complained against. It had

however been pointed out that persons who lodged frivolous and vexatious complaints often worded them, in the spirit of exaggeration, so as to make the offence complained of one of a more serious nature, although in reality the injury done by the complainant to the accused person was not greater than if he had worded his petition more moderately. And there seemed no good reason for preventing the Magistrate awarding amends in that summary way, merely because of a little exaggeration in the words of the petition. It was therefore proposed, in section 267, to allow the same summary procedure in cases where the complaint charged certain other offences, nearly all of which were punishable with a maximum of one or two years' imprisonment.

With reference to the important subject of appeals, he thought it right to say that, while he had left the law of appeals almost entirely untouched, yet he had reason to believe that one important question connected with it was generally attracting attention, and that probably some references on the subject would be received before this Bill was referred to a Committee. He referred to the rule of the present law which made appeals from Assistant and Deputy Magistrates, when vested with full powers, lie, not to their superior officer, the Magistrate of the District, but to the Sessions Judge. He was aware that some persons considered that an alteration might be desirable. In the absence of any tangible suggestion, he had not ventured to propose any alteration in the law on that point. But having received strong expressions of opinion as to the necessity of making all Magistrates really subordinate to the Magistrate of the District in all matters except appeals, he had suggested certain alterations with that object.

There was one other point of considerable importance, not noticed in the Statement of Objects and Reasons, to which he must refer. Section 135 of the present Code prescribed the procedure to be adopted by the Police on the occurrence of a Police offence, or one for which the Police might arrest without warrant. When the Code was before the Legislative Council, in one of its very latest stages, a sentence was added to this section, on the bare motion of a member, and without any reasons being shown in the printed proceedings, providing that any Magistrate might proceed to the scene of such an offence to hold a preliminary enquiry into it. There was no attempt to define the respective spheres of action of the Magistrate and the Police officer. As a large proportion of these offences must be sessions cases, and as very few of the Native Magistrates, who were likely to be near enough to the scene of the offence to proceed there, were empowered to deal with sessions cases, it was difficult to see what procedure was required from a Magistrate under such circumstances. He could not supersede the Police, nor could he materially aid them except in two

points. The presence of a Magistrate was requisite under section 141 to validate a confession made by a person in custody, and the final order of a Magistrate was requisite for the detention beyond twenty-four hours of an accused person in the custody of the Police. But to whatever extent the presence of a Magistrate might be useful in these two points, there was a vagueness in section 135, as to the duty of a Magistrate when he proceeded to the scene of an offence, which should be remedied. He had not attempted to propose any alteration of the law, because no material alteration had been suggested, and because he had reason to believe that important communications on the subject of these three sections would be sent in after the Bill was published.

He had no further remarks to make at present. It had been suggested to him as desirable that, instead of now referring the Bill to a Select Committee, he should merely introduce it with the view of its publication, and defer committing it until the regular sittings of the Council re-commenced. With His Excellency's permission he would, therefore, omit the latter part of the motion that stood in his name, and simply introduce the Bill.

KING OF OUDHS' DEBTS' BILL.

The Hon'ble Sir R. TEMPLE presented the Report of the Select Committee on the Bill to appoint a Commissioner to enquire into certain claims against the King of Oudh, and for other purposes.

CONTAGIOUS DISEASES' BILL.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the rules suspended.

The Hon'ble MR. MAINE then introduced the Bill for the better prevention of Contagious Diseases, and moved that it be referred to a Select Committee with instructions to report in a week. He was somewhat loth to ask His Excellency the President to suspend a rule which had been so recently made. But the real discussion on the Bill would be confined to the Select Committee, and he would now only ask the Council to affirm its principle without reference to the details.

The Hon'ble MR. STRACHEY said that, when the Hon'ble Mr. Maine asked for leave to introduce the Bill, he had referred to the improvements that had been effected in the Oudh cantonments under a system very similar to that which

it was proposed to introduce into the presidency towns under this Bill. MR. STRACHEY thought that it might be useful if he told the Council in a very few words what results had actually taken place in the province of Oudh. He merely referred to Oudh because it was the only province regarding which he had information, though he had no doubt that equally successful results might have occurred in other provinces. The annual average number of soldiers admitted to hospital in the four military stations of Oudh, on account of venereal diseases, for the five years before preventive measures were adopted, was thirty per cent. of the whole strength. This was only slightly in excess of the average for the whole British Army in the Bengal Presidency, and the excess might be accounted for by the fact that the two chief military stations in Oudh were in the immediate proximity of large cities. During the last six months of 1867, the result actually arrived at in Oudh was, that the former average of thirty per cent. was reduced to little more than twelve. In one of the Oudh stations, Sítapúr, where, in 1866, no less than forty-eight men out of every hundred were admitted into hospital on account of these diseases, the rate fell to a fraction above five per hundred. If a reduction of disease similar to that which had been actually brought about at Sítapúr could be obtained at all the stations of this Presidency—and there was no reason why this should not be—we should have the following results. In the British Army in the Bengal Presidency, in 1866, with a strength of say 35,000 men, there were 9,300 cases of these diseases. At the Sítapúr rate, the cases would have been reduced from 9,300 to 1,890. This would have prevented 7,410 men from going into hospital in the year. The average period for which each case was under treatment was little less than a month, and thus, the result of a general improvement such as that actually obtained at Sítapúr would be, that about 600 men would be added to the permanent effective strength of the Army of this Presidency.

Nor did these figures at all adequately represent the real advantage that would be gained. All medical authorities agreed that the amount of injury done to the Army could not be even approximately represented by the figures which showed the actual number of admissions into hospital on account of venereal diseases. By ruining men's constitutions, they predisposed to almost every form of serious disease, and they added largely to the mortality and to the invaliding which were nominally ascribed to other causes. There could be no question that what had been done in Oudh might be done everywhere else, and such a result would be one of really national importance.

There could be no reason why similar measures should not be almost equally successful for the protection of other classes of the community.

He might add that the measures which had been in force in Oudh had not been at all confined to the military cantonments. They had been for some years in operation throughout the great city of Lucknow, which probably contained more than 200,000 inhabitants, and he was able to assert, not only that they had been most beneficial, and that they were approved by every section of the community, but that they had even ceased to be unpopular among the class of women who had been subjected to regulation.

The Motion was put and agreed to.

MILITARY COURTS OF REQUESTS' BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to empower the Governor General of India in Council to suspend the operation of section 17 of Act No. XI of 1841 (for consolidating and amending the Regulations concerning Military Courts of Requests for Native officers and soldiers in the service of the East India Company) in such places as he shall by notification declare.

HIGH COURT FEES' BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide for the collection, by means of stamps, of fees payable in the High Court of Judicature at Fort William.

The following Select Committee was named :—

On the Bill for the better prevention of Contagious Diseases—His Honour the Lieutenant Governor, the Hon'ble Messrs. Strachey, Shaw Stewart, Cockerell and Minchin and the Mover.

The Council adjourned till the 11th April 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 3rd April 1868.

Office of Supdt. Govt. Printing.—No. .—8-4-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Saturday, the 11th April 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble F. R. Cockerell.
The Hon'ble J. I. Minchin.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

CONTAGIOUS DISEASES' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for the better prevention of Contagious Diseases.

INDIAN CONTRACT LAW.

The Hon'ble MR. MAINE also presented a preliminary Report of the Select Committee on the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

MILITARY COURTS OF REQUESTS' BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to empower the Governor General of India in Council to suspend the operation of section 17 of Act No. XI of 1841 (for consolidating and amending the Regulations concerning Military Courts of Requests for Native officers and soldiers in the service of the East India Company) in such places as he shall by notification declare, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

PRINCIPAL SADR AMÍNS, SADR AMÍNS AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes.

PANJÁB TENANCY BILL.

The Hon'ble SIR RICHARD TEMPLE moved that the Bill to define and amend the law relating to the tenancy of land in the Panjáb be referred to a Select Committee with instructions to report in one month. He said it would be in the recollection of the Council that this Bill had some time since been introduced by his friend Mr. Brandreth, and it was much to be regretted that his Hon'ble friend was prevented from finishing the work which he had begun; but before Mr. Brandreth had departed, SIR R. TEMPLE had put down in writing the Hon'ble Member's opinions on each part of the Bill, and therefore the Council would be in full possession of that gentleman's views. In January last, the consideration of the Bill had been postponed pending the receipt of information from the Panjáb. That information had now been received, and the papers consisted of a memorandum by His Honour the Lieutenant Governor of the Panjáb, in which various amendments had been proposed, and also of certain opinions expressed by Mr. Edward Prinsep. So far, then, the requirements of the Council had been fulfilled.

The Bill as now laid before the Council had three main objects in view. First, the definition of occupancy-right; secondly, the regulation of the enhancement of rent; and, thirdly, the concession of compensation for eviction of tenants and for unexhausted improvements. Under the first head, the definition of the right of occupancy, the Lieutenant Governor had proposed various elaborations of Mr. Brandreth's definition. Those elaborations had been proposed with all that comprehensive and minute knowledge for which His Honour was so distinguished. But SIR RICHARD TEMPLE rather apprehended that the phraseology was not such as would approve itself to the Hon'ble Mr. Maine and the learned Secretary of the Council. SIR RICHARD TEMPLE had therefore endeavoured to revise the phraseology so as to simplify it; but even then he thought the revised language would undergo still more castigation in the Legislative Department. As regarded the second point, the regulation of the enhancement of rent, the Lieutenant Governor had proposed various verbal emendations, which, with slight simplifications, SIR RICHARD TEMPLE proposed to accept. But with regard to the third head, the concession of compensation for eviction and for unexhausted improvements, there was one point of considerable importance on

which the Lieutenant Governor laid great stress. It was proposed that the landlord might evict a tenant on payment of compensation, or, in other words, that the tenant might be bought out. That principle was somewhat novel to the practice of the Panjáb. But it was equitable in itself, was not without precedent in England, and was now strongly recommended by the Local Government; and he therefore proposed to retain it. On the rest of that portion of the Bill, the phraseology of the Lieutenant Governor was distinguished by all that local knowledge which SIR RICHARD TEMPLE had just adverted to, but he feared the language would again require revision.

Those were the main objects of the Bill. He was sanguine that, if the Council would agree to the Bill being referred to a Select Committee, there would be found to be no difficulty with regard to principle, and that the points remaining for discussion would be only matters of detail which would be best settled in that manner.

He would beg to add a few words regarding the policy of the Bill. He found that he was quoted in the correspondence by the Lieutenant Governor (and correctly quoted) as a witness rather against the formal existence, under Native rule, of what was technically called tenant-right in the Panjáb. No doubt, when a Settlement Officer in the Panjáb, he (SIR RICHARD TEMPLE) had written passages which would appear to have that interpretation. He was not here to unsay what he had once said, although it might appear inconsistent in him to take charge of the Bill which had for its object the recognition of tenant-right. But still he would point out to the Council what he had written formerly on the subject, because the point involved one of the vital principles on which the Bill was founded. It was true he had written as follows:—

"The right of occupancy, apart from proprietary right, was unknown; the Government may partially have recognized it, but the people did not: however long a patch of land may have been occupied, the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur."

Again he had written—

"The distinction between hereditary and non-hereditary cultivators is not indigenous in this part of the country. It has been introduced by the settlement."

No doubt these passages did militate very much against the existence of occupancy-rights under Native rule in the Panjáb; but then, there were many passages in the same report which very much qualified that view. For instance, he wrote—

"The cultivator made good the Government claim on his glebe precisely in the same manner as the members of the proprietary on their holdings."

Again—

"In fact the cultivators could not afford the proprietor much, when they had to contribute all they could spare to the State."

Again—

"The cultivator, while he held the position, also bore all the burdens and calamities of a málguzár (revenue-payer). He it was who underwent the drain of presents, cesses, and extra collections, and who fed the hungry retainers of the revenue collectors."

Again—

"If the proprietor chose, he might allow the cultivators to engage; nor would he in that case have been held at all responsible for any balance or default that might occur."

Again—

"Sometimes the privilege of engaging would be contended for by the cultivators and the proprietors."

Again—

"In many instances claims, on the one hand, of cultivators who had borne the fiscal burdens, and, on the other hand, of proprietors who had realized some dues, would have to be balanced. The revenue system of our predecessors had often rendered it difficult to distinguish one class of cultivators from the other, and the upper class [of cultivators] from the proprietor."

Now, he submitted that those passages, taken all together, did show that the tenant-right generally, like the right of the landlord, was insecure and uncertain in the midst of universal insecurity and uncertainty, though there were many classes of tenants that had prescriptive titles as good in their way as the titles of the proprietors themselves. In that state of things, what did we do? That was discovered in a further passage of his report, which he would read—

"We have endeavoured to preserve the cultivators' position, and to improve it to the same extent as that of all other agriculturists."

And again—

"They pay to the proprietor more now than formerly. But then, they pay much less to the State, and their position is much more definite and permanent than heretofore."

Under those circumstances, we certainly did record a great number of cultivators as occupancy ryots; those proceedings were approved by the Government of the day, and had been in force for fifteen years and more. Considerable

rights had grown up in consequence, and it was impossible to ignore the position which had thus arisen, partly out of the state of things under Native rule, and partly out of the proceedings of the British Government. But no doubt we did, in making that record, go a little too far. Perhaps we had thought too much of the rule of twelve years' possession, and too little of the concomitant incidents of the tenure. The number of cultivators who were recorded with occupancy-rights was too great. Mr. Prinsep had very clearly shown that such had been the case. And, inasmuch as that gentleman possessed a really extraordinary knowledge of the rural classes and had laboured most perseveringly for their welfare, whatever came from him was entitled to much weight. But in defence of the Settlement Department, it must be urged that we were under special temptation to record occupancy-ryots largely. In those days the competition was for tenants rather than for land; proprietors were only too happy to see us record them as occupancy-ryots. The proprietors expected that thus these ryots would be bound to the land as sharers in what were then considered the severe liabilities of proprietary right. The manner in which a tenant was regarded in those days was given in a passage of his (SIR R. TEMPLE'S) Settlement Report from which he had already quoted:—

> "In some villages, where a few steady tenants are the main-stay of the estate, it has suited the proprietors to excuse the hereditary tenant altogether from the payment of rent."

Again—

> "Money being scarce at present, the proprietor is generally glad to compound with the cultivator for the discharge of málguzárí liabilities, and is content with a nominal málikána."

Now that the competition was coming to be for land, rather than for tenants, the landlords might probably have changed their opinions.

Well, it being admitted that there were certain classes who might be recorded with rights of occupancy; it being further admitted that that record was carried a little too far, and that rectification was necessary, the question arose, how should that rectification be made? We say that it should be made by legislation. In the first place the proceedings of the settlement were of a *quasi* judicial character. The settlement officers were vested by the Government with powers to that effect, and if Mr. Prinsep was now vested with such powers, so also were those who went before him. Thus there was doubt whether the settlement-proceedings could be lawfully rectified without the authority of a law. In the second place, most of these cases would have to be adjudicated by the Courts of justice, and the Courts would naturally expect something more than executive authority, particularly when the executive

orders were conflicting with former executive orders of equal, if not greater, validity. And thus legislative authority was necessary to legalize the proceedings which had been very properly undertaken by Mr. Prinsep up to this time.

Those, then, were briefly the grounds on which he had to ask the Council to agree to the Bill being referred to a Select Committee. He believed it to be a Bill such as would suit the existing state of things, which had arisen partly out of the practice under the Native rule, and partly out of the circumstances of the British administration: by it we rectified what was amiss; by it we reconciled the somewhat conflicting interests of two of the most important classes of the agricultural community. There was not the slightest desire to create what did not exist, nor to benefit the cultivator at the expense of the proprietor; and when we considered the absolute proprietary right that had been given to the proprietors, it was desirable to leave them to improve and benefit their estates unfettered by unnecessary conditions. This Bill would be consistent with that principle, and, if passed, it would add one more to the long list of advantages which the Panjáb enjoyed.

The Hon'ble MR. COCKERELL said there was one question which he should like to ask the Hon'ble mover, in regard to that portion of the Bill which related to rights of occupancy. As he understood the sections of the Bill as now drawn and Sir Richard Temple's explanation of them, the object of one clause regarding the right of occupancy was to lay down certain rules for the guidance of the settlement officers in dealing with cases now pending, or which may hereafter be brought, before them; and in these rules it was provided that the settlement officer must recognize the rights of occupancy of a tenant holding under certain specified conditions; but he (MR. COCKERELL) found that it was proposed to retain in that section, as embodying one of the said conditions, the clause inserted in Mr. Brandreth's Bill, which declared the right of occupancy to be vested in any tenant whose name appeared in the record of any regular settlement sanctioned by the Lieutenant Governor prior to the passing of this Act. It would seem, therefore, that, if this Bill should become law, the proceedings of Mr. Prinsep or any other settlement officer, engaged in the revision and correction of the errors of previous settlements, must at once come to a standstill, inasmuch as he, under the operation of those rules, would have no power to question the validity of the rights of occupancy recorded in the settlement-proceedings which took place on the first annexation of the Panjáb. If that were the case, and MR. COCKERELL was correct in his apprehension of the effect of the section, he would ask how the provisions of the Bill with regard to the right of occupancy were to be carried out, and how the rules that were to be laid down for the guidance of settlement officers were to be carried into effect?

The Hon'ble MAJOR GENERAL SIR H. M. DURAND said that, when asking leave to refer this Bill to a Select Committee, the Hon'ble Member who had taken charge of the Bill touched upon the necessity which existed for legislation on the subjects contained in the Bill, and made this the basis on which he put it to the Council to allow the Bill to be sent to a Committee. SIR H. DURAND thought the Hon'ble Member was right in endeavouring to establish what had been greatly challenged, namely, the fact whether any legislative measure were at all needed. It had been questioned by that very able officer, Mr. Prinsep, whose words, with the permission of the Council, he would read, though at some length, inasmuch as they put the matter clearly. They were as followed, and were to be found in the letter to Mr. Brandreth of the 28th January 1868 :—

"Now, what I wish to come to is this: (1) if we can act legally under Regulation VII of 1822; (2) if, after the awards are given, there are still two doors open, (*a*) either for tenant to ask for review of order summarily, and appeal on the summary enquiry—the regular procedure of settlement—or (*b*) can bring a regular suit under same Act, which also can be appealed, and if further dissatisfied, the objector can appeal against both processes, first to Settlement Officer, then to me, afterwards to Financial Commissioner; (3) if custom was not followed before, and is being followed now; (4) if the Puna system is objected to, we are ready to drop it in all cases not voluntarily agreed to; (5) if in this way the entries of a former settlement record can always be so far respected that either they are proved to be wrong, when they are corrected—

(1) by agreement,
(2) by award,
(3) failing award, by regular suit,

or proved to be right, they are maintained, as in the 4,000 decrees given in contested suits alone, and 11,533 awards before Superintendents who did find the status and upheld them (whether on agreement or otherwise) in the Amritsar Division. If these five points show we come to the exact conclusion aimed at by the Bill, then why all this legislation, I ask?

These are my chief arguments for *registration*, as better, if systematically followed and under clear intelligible safeguards, than leaping in the dark, propping up a bad cause, and increasing expense, litigation, and bitter feeling among the two classes by referring everything outright to the Courts, as you are aiming at in this effort of legislation."

Mr. Prinsep then proceeded to add that, under certain conditions, he was not seriously opposed to legislation. Again he must ask the patience of the Council whilst he read—

"I think it quite feasible and most desirable to have a Tenant-right Act as well as Tenant-rent Act; only what I object to are the *principles of the Bill, in Part II particularly.*

If you will throw out the term of years—'12 years prior to 1st day of April 1869'—in section 5, and 'within the thirty years immediately before the institution of a suit,' and let the condition (3) under this section read thus—'That relating to the right of occupancy,' &c.; also take away the *explanation clause*, and put in 'custom as known in this and adjacent villages,' or 'under similar incidents of tenure,' instead of the ambiguous and *dark* phrase holding 'under similar circumstances,' which may mean anything, then I can come to some understanding with you. I will even agree to this. After framing exceptions three as above, let it be followed by a proviso thus:—

'*Provided* that, if no such custom or analogy be proved and it is discovered that *adverse* possession has been held absolutely for thirty years (or even reduce it to twelve years), the entry shall be upheld.' This would allow full scope for decisions being given 'according to *the custom of the country*,' which, I am happy to see in your letter, is what the Bill now aims at."

Now, in consequence of the action taken by this Council on the 17th January last, they had in their hands a most valuable Minute from the Lieutenant Governor of the Panjáb. It bore every mark of careful thought, and of earnest deliberation. It was in every respect a most important State-paper, and in seeking to arrive at a decision on the expediency of any legislation on this delicate and difficult subject, he (SIR H. DURAND) had read it with the attention it merited. Although it nowhere stated in very absolute terms that legislation was necessary—at least he had failed to find any positive assertion of the kind—yet he thought that its general tenor was in favour of special legislation. It was a very remarkable Minute, and, coming from such a quarter, it had, with him, great weight; and on this particular point the opinion of Sir D. Macleod might be inferred, both from its general scope, and also from the particular paragraph which, with the sanction of the Council, he would read—

While the replies, especially to the 8th of the questions put by the Panjáb Government, show how urgently legislation is required.

"To those who consider that the existing state of things is sufficiently satisfactory for practical purposes, and doubt, therefore, whether further legislation is now required, I would earnestly suggest a careful perusal of the replies, at least to the 8th of the questions put by the Panjáb Government, which, for facility of reference, I have transcribed in the margin. For many years past, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, *viz.*, that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers who are most careful to enquire into the feelings of those about them; and as I deemed it most essential that a distinct avowal of the impressions entertained on the point should be elicited, I had the question put."

"8. State how the operation of our system, thus far, has affected the relation between tenants and proprietors especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?"

Passing over intervening paras. of great interest, but not immediately bearing on the point to which he referred, he would read the 22nd paragraph of Sir D. Macleod's Minute—

Or, however, the constraining influence of the Sikh rulers may have prevented landlords from asserting what they considered to be their rights.

"It is no doubt true that, except where the people were too strong to be trifled with, tenants were, under Sikh rule, retained in their holdings, or new ones introduced by the officials of the day in opposition to the wishes of the proprietor; but I cannot think that this affords sufficient grounds for our legislature to stereotype such a state of things, or to accept, as an established principle, that which has been the result of violence and wrong, however tenderly we may be bound to deal with the status of individuals thus established, however wrongfully. When borne down by an over-ruling power, and in times of anarchy, populations will resignedly endure much which they will indignantly resist when enforced by the rigour of settled laws; and in this matter I am myself most fully satisfied that the right of the proprietor to dispose of his lands, however it may have remained in abeyance, has never ceased to be acknowledged and will never be contentedly surrendered. The vigorous Játs of the Mánjha and Málwa, the Pathâns of the frontier, and the hardy races of the salt-range and adjacent tracts, have not yet, I believe, as a body, recognized the fact that they are really to be precluded from the use of their lands should they require them; and on numerous occasions most bitter protests have been made to me on the subject, where an individual has been made to feel, by the action of our Courts, that such is indeed the law. As time progresses, the value of land will increase, and the requirements of its owners will multiply, when this acerbity of feeling cannot but increase likewise; and it is difficult to foresee what will be the result, if a corrective be not now applied."

From these particular paras. and from the general tone of this Minute, it seemed fair to conclude that the person in the best position to form a judgment on the question was in favour of some legislation. This, with the admission before noted, of Mr. Prinsep and other Panjáb officers, disposed him to accept it as established that some legislation might be expedient.

The query then came—and it was one which the Hon'ble Member had himself dilated upon—what should be the aim and character of that legislation? This was a question of the very gravest moment, for it involved the welfare and the contentment of that important Frontier Province, the Panjáb, not a matter to be trifled with. At the same time it was one of no ordinary difficulty, and one result of the line pursued by this Council on the 17th January last was, that they were now cognizant of the circumstance that, in the previous November, the Lieutenant Governor of the Panjáb deemed the matter of such serious importance, that he assembled at Lahore a Commission, and a Commission constituted of very able men, to consider and report on the terms in which a Bill should be drafted to meet the requirements of the state of affairs. Of the inherent difficulty of the duty laid on the Committee they were made aware

by the fact which the Lieutenant Governor himself was careful to note, that most of its members recorded dissents. Some on one point, some on more, but, as the Lieutenant Governor justly, though concisely, gave it to be understood, in one form or other the majority were dissentients. This demonstrated the thorny nature of the question, and that, in having recourse to the remedial and corrective measures which the Lieutenant Governor advocated, it behoved this Council to be very careful that it did not complicate existing difficulties by the creation of new rights. They had the assurance of Sir R. Temple that there was no intention of creating new rights, and that all that was purposed was to define existing rights and to conserve them. This might be so, but the provisions of the Bill on this head would demand careful scrutiny, for it was imperative on this Council that any Bill that it might pass should not be justly exposed to the objection which a very able officer of the Panjáb Commission, Colonel M'cNeile, raised to Mr. Brandreth's Draft Bill, and which he asked liberty to quote—

"Further interference than this, in the subjects treated of in the Bill, I look upon with some alarm. These are not matters that affect the people exceptionally, as do those ordinarily dealt with by the legislature; they stand less apart from daily life than even the close-touching questions of taxation; they relate to habits and customs as ingrained as religious tenets, and the enactments of this Bill, if it become law, will disorganize rural society throughout the province, and breed feuds and dissensions in every village. The Courts will be flooded with suits under Parts II, IV, V and VI, many of the provisions of which can be called nothing less than revolutionary; and the defeated litigant will carry home with him a grudge which, being about land, will live in his family for ever."

Whatever was finally resolved must be clear of any such results as were here foreshadowed.

He could have wished himself that they were in possession of a greater amount of trustworthy facts. He could have desired a larger corpus of the recorded customs and usages of the various provinces of the Panjáb, for they were different in the several main divisions of that Frontier Province. But they were assured, in the 14th paragraph of the Lieutenant Governor's Minute, that he did not think it was possible, under existing circumstances, or practically necessary, to collect more trustworthy information than had now been supplied, to guide the legislature in determining the general course which legislation should follow. Considering the valuable facts which, under the sanction and with the approval of the Lieutenant Governor, Mr. Prinsep had arrayed, he supposed that they must accept this conclusion as warranting the reference of the Bill to a Committee without further delay for more complete and general information. But he was strongly of opinion that there must be no precipitancy in acting on this

view, and that, in the course of the review of the information available, they might require more that was special on the customs and usages of various parts of the Panjáb, and that they must be exceedingly solicitous that any innovation admitted into the Bill should be such as carried the cordial assent of the people affected by them.

The next point moved by Sir R. Temple was, that the Bill answered the conditions he had prescribed as the radical considerations which had ruled in the framing of the Bill.

He gave the Hon'ble Member credit for having endeavoured to reconcile and harmonize the differences between Sir D. Macleod's and Mr. Brandreth's opinions. But the discrepancies were on some points material, and his success had necessarily been partial. The Bill, in its present form, was far from symmetrical, and would require careful elaboration to make it more so. It would require to be taken section by section, and to have its provisions minutely tested and examined. He should have taken up some of the sections to prove his meaning, and to show how open to discussion were some of the matters involved; but it would have driven him to occupy the time of the Council to an inordinate degree, and the sections would be better analyzed *seriatim* in Committee, where they must undergo a searching investigation before they became law; for he was convinced that, without his further consuming the time of the Council in endeavouring to show the necessity for this patient and searching consideration, the Council quite understood that, as far as he was concerned in agreeing to the reference of the Bill to a Select Committee, he did so with the feeling that there would be no precipitancy in pressing on the Bill, and every opportunity given for the most deliberate expression of opinion after its provisions were made known. He would consequently not touch the details of the Bill, but agree to its being entrusted to a Select Committee.

The Hon'ble MR. TAYLOR said that, as he was one of those who, on a former occasion, had doubted whether a real necessity was shown for legislation in this matter, he thought it right to state that he was now satisfied, from a perusal of the voluminous papers which had come up from the Panjáb and especially of the Minutes of His Honour the Lieutenant Governor, passages of which had been quoted by Sir H Durand, that a speedy authoritative settlement of this vexed question of Panjáb Tenant Right was highly desirable. He was therefore no longer opposed to the Bill being sent to Committee, whose labours, he trusted, would result in a measure which would have the effect of harmonizing the conflicting opinions of the various experienced authorities of the Panjáb, and be of lasting benefit to the country.

The Hon'ble SIR RICHARD TEMPLE said he was not sure whether he quite correctly understood the Hon'ble Mr. Cockerell's question, but he apprehended that the point on which his Hon'ble friend required explanation was this. Supposing that the Bill virtually gave legal force—authoritative legislative effect—to the proceedings of former settlements, how could Mr. Prinsep now or hereafter call those records into question; in other words, how could any errors in the former settlement records be now rectified? Assuming that, or something like that, to be the point on which the Hon'ble Mr. Cockerell required explanation, his (SIR R. TEMPLE'S) answer was this. In the Bill, they found the following among the definitions of occupancy-ryots—

"Every tenant whose name appears in the records of a regular settlement sanctioned by the Local Government prior to the passing of this Act."

But then the draft Bill proceeded thus:—

"The landowner may rebut the said presumption by showing—

"(1) That the entry in the said records was made in violation of the rules laid down by the settlement officer, as set forth in the official reports or records of the settlement.

"(2) Or that the tenant had voluntarily admitted before any settlement officer that he is a tenant-at-will."

Therefore he submitted that the Bill did provide specifically for the revision of any errors that might have crept into the settlement record.

Perhaps the only other point that he need advert to was the remarks of Mr. E. Prinsep (quoted by the Hon'ble Sir H. Durand), that great dissatisfaction would be created amongst proprietors if they could not occasionally remove tenants when they required the land for themselves. Now, this Bill did very specifically provide for that, by allowing proprietors to buy tenants out, that is, to remove them on payment of compensation; and in order to secure that such compensation should be fully awarded, it was further provided that the Courts should carefully and specifically assess the same. For the details of the manner in which compensation should be awarded in such cases and for unexhausted improvements, he proposed to adopt the phraseology of the Bill introduced for Oudh by the Hon'ble Mr. Strachey, which he (SIR R. TEMPLE) believed would be found a good legislative model.

As to the danger which seemed to be apprehended by Colonel M'cNeile (quoted by the Hon'ble Sir H. Durand) he (SIR R. TEMPLE) hoped that, under the law as it would be amended in Committee, no such fear need be entertained. To those members of the Council who had come from distant parts of India,

the landed proprietors and the occupancy-ryots of the Panjáb might appear little more than vague abstractions. But to him and others, who had worked and moved amongst these people and had pitched their tents for years in the midst of them, these classes were living realities. He thought he could venture to assure the Council that, if this Bill as amended should be passed, the evils so vividly pourtrayed by Colonel M'cNeile would be averted.

The Motion was put and agreed to.

KING OF OUDH'S DEBTS' BILL.

The Hon'ble SIR R. TEMPLE also moved that the Report of the Select Committee on the Bill to appoint a Commissioner to enquire into certain claims against the King of Oudh, and for other purposes, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR R. TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define and amend the law relating to the tenancy of land in the Panjáb—The Hon'ble Mr. Taylor, the Hon'ble Major General Sir H. M. Durand, the Hon'ble Messrs Maine, Strachey, Shaw Stewart and Cockerell, the Hon'ble Rájá Shioráj Singh and the Mover.

The Council adjourned till the 17th April 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 11*th April* 1868.

Office Supdt. Govt. Printing.—No. 3024 L. C.—16-4-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 17th April 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble J. Skinner.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

CONTAGIOUS DISEASES' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the better prevention of Contagious Diseases be taken into consideration. He said that, with one exception, the changes proposed by the Select Committee were not important. In addition to the section of the original Bill which had been framed on the analogy of the English statutory provision relating to keepers of houses of ill-fame, the Committee proposed that these persons should register themselves, without, however, relieving them from any other penalty to which their occupation might expose them. The Bill also provided that offices should be opened for the registration of women to whom the Bill applied, and that they should attend there. It was thought that this system would not work well in some places, and therefore power was given to the Local Governments to make rules of registration for themselves. A clause had been introduced to the effect that all registered women sent to hospital should receive lodging, food, clothing and medical treatment gratis. Nothing, MR. MAINE would remark, was said as to the source from which the expenditure necessary for the support and treatment of the women was to be defrayed. That had been designedly left for future arrangement. The Bill, as amended, further provided that prosecutions under the Act should be instituted only by such person as the Local Government should appoint, and the Magistrates exercising jurisdiction under the Act were not to be of a grade inferior to that

of a Subordinate Magistrate of the first class. The utmost care had been taken throughout not to put power into the hands of police or other functionaries of too low a grade.

The really important point in which the Bill had been modified was in the provision which made it applicable, not only to seaports, but to any place in India which the Local Government, with the sanction of the Governor General in Council, should specify. This change had been effected mainly in consequence of the remarks which had been made, when the Bill was first before the Council, by his Hon'ble friend Mr. Strachey. Those most satisfactory results described by his Hon'ble friend had been obtained in the great city of Lucknow, to which the rules of the Cantonment Magistrates' Act had been applied by making it, for the purposes of that law, a part of the cantonment. The expedient resorted to had therefore been a fiction. But the Committee thought that such a mode of attaining a desirable end was to be regretted, and therefore made the Bill applicable to inland towns as well as seaports; although, doubtless, it was in seaports that the experiment would first be tried.

The Hon'ble MR. STRACHEY said that, believing that a more important and beneficial measure could hardly come before the legislature in this country or elsewhere, he was unwilling to give a silent vote in favour of this Bill. If the Council should consent, as he hoped he was not too sanguine in anticipating that it would consent, not only to pass the Bill, but to do so unanimously and without a dissentient voice, he ventured to say that its proceedings would be long remembered to its honour, and that the effect of the Bill would be felt far beyond the Indian towns to which the Act would extend. This was not the first, but it was not the least important occasion on which a measure of Indian legislation might serve as a model, and might prove of great assistance to those who desired to carry out reforms at home. Some years ago opposition to measures of this kind was so great that it seemed almost hopeless to expect that an English legislature would consent to adopt them. The change in public opinion on these matters had been most remarkable, and he ventured to say that the day was not distant when almost all reasonable men would admit that, amongst all the duties of the legislature, there could hardly be one more important than that of alleviating one of the worst causes of human suffering, and protecting posterity against the consequences of the vice of the present generation.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that the following sections be inserted after section 17 :—

"18. If any registered woman on whom such order as last aforesaid shall have been served conducts herself as a common prostitute before such surgeon or other person empowered as last

aforesaid certifies in writing to the effect that she is then free from a contagious disease (the proof of which certificate shall lie on her), she shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

"19. During the interval between the service of such order upon any registered woman and the granting of such certificate, an allowance for her subsistence shall be provided of such amount and in such manner as the Local Government shall from time to time prescribe."

The provisions of section 17 of the Bill as it stood were intended to be temporary and provisional. It was thought that at first there might be, in some places, not nearly sufficient accommodation in lock-hospitals for the persons whom it would be necessary to treat. Hence, several medical gentlemen had impressed upon MR. MAINE the necessity of making provision for a system of out-door treatment. Other persons whom he had consulted had urged on him strongly that women under such treatment should not be allowed to continue their occupation. It would be observed that, under the circumstances supposed, the condition of the woman was ascertained and known to herself. MR. MAINE recognized the force of the argument, and was willing to make the continuance of the occupation until the time of cure punishable. But he thought that such a provision would be most unjust unless, in the meantime, the means of livelihood were provided to the woman under treatment. Hence, to the penal section he had added a provision that the woman should be entitled to a subsistence allowance up to the time of the surgeon granting a certificate of cure.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

PRINCIPAL SADR AMÍNS, SADR AMÍNS AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes, be taken into consideration. He said that some alterations of a substantial character had been made in the Bill since its introduction into this Council, and, in stating the considerations which had led to the first of these changes—he referred to the proposed abolition of the Court of the Sadr Amín—it might be well that he should remind the Council of the facts of the case as regarded the existing jurisdiction of the Sadr Amín and Munsif.

Every district was divided into a certain number of Munsifís, in each of which a Munsif's Court was established, for the trial of all suits the amount or

value of the subject-matter of which did not exceed rupees three hundred. The Munsifí in which the principal Civil Court of the district was located was called the Sadr Munsifí.

The pecuniary limits of the Sadr Amín's jurisdiction commenced from the amount at which the Munsif's jurisdiction ceased, and extended to rupees one thousand; whilst, in regard to local limits, his jurisdiction extended over the whole district.

In the Lower Provinces of Bengal almost universally, and in the North-Western Provinces generally, the Sadr Amín was vested with the jurisdiction of a Munsif within the limits of the Sadr Munsifí in which his Court was situated. The result of the increased jurisdiction assigned by the Bill to all Munsifs was, under the operation of the provisions of the Code of Civil Procedure in regard to the institution of suits, the reduction of the status of Sadr Amíns, both in regard to pecuniary and local jurisdiction, to that of a Munsif within the Sadr Munsifí.

It became necessary, therefore, either to confer upon Sadr Amíns an entirely new and increased jurisdiction, commencing from the limit of their former jurisdiction, or to abolish their Courts as Courts of distinct jurisdiction. In the Bill as originally drawn, it was proposed to adopt the former course; and, accordingly, Sadr Amíns were thereby vested with power of cognizance of suits whose amount or value exceeded rupees one thousand, but was not more than rupees three thousand, retaining the local limits of their former jurisdiction. The Committee, on a careful consideration of this proposal, were decidedly of opinion that the number of suits ranging between these amounts instituted in any district would in all probability be insufficient to fully employ those Courts; whilst the effect of such a measure would necessarily be the *pro tanto* encroachment upon the existing jurisdiction of the Principal Sadr Amíns, which, so far as the information in possession of the Committee enabled them to judge, stood in no need of such curtailment. On these grounds, it was now proposed to abolish the separate Court of Sadr Amín. The proposal necessarily involved a change of designation of the Courts of Principal Sadr Amíns, and, on other considerations, it was held that such change was desirable.

The Courts of Munsifs grew out of the office of Amín, or Native Commissioner, whose original quasi-judicial functions were performed in the character of arbitrators, or referees; hence the Court or office immediately above that of the Amín, or Munsif, derived the name of Sadr Amín, or Native Head Commissioner, and later, when the Court of Principal Sadr Amín was

established by Regulation V of 1831, the old nomenclature was adhered to. Up to that time, eligibility for these offices was restricted to Natives of this country, and the nomenclature adopted was not, therefore, inappropriate to the circumstances of the case. By Act VIII of 1836, that restriction was removed, and all persons were declared eligible for the offices of Principal Sadr Amín, Sadr Amín and Munsíf; the original designation of those offices seemed, since the passing of that enactment, to have lost its peculiar claim to retention, and in the case of the superior class of judicial officers to whom this Bill had reference, might well be abandoned in favour of the new term proposed.

In the Bill as introduced to the Council, the power of selection and appointment of Munsif, which by the existing usage was vested in the High Court, was transferred to the Local Government. In deference to the strongly expressed opinion of the High Court on this subject, it was now proposed to abandon, to a certain extent, the contemplated change of practice, and reserve to the High Court the selection, and, consequently, virtual appointment, of Munsifs. The question had been so settled after very careful consideration and discussion of the subject by the Select Committee. The late Hon'ble Member of this Council by whom the Bill was introduced argued that the Government had better means and opportunities than the High Court of making a fit selection of persons for appointment as Munsifs. He did not wish to lay much stress upon that argument, or institute any comparison of the field for selection presented to each of these high authorities. He thought that a stronger argument might be adduced in favour of the change, from the recognized rule in England and elsewhere that political expediency required that the appointment of persons to the judicial Bench should be exclusively vested in the Executive Government. To determine the value of the argument on the other side, derived from the long-established contrary usage of this country in regard to such appointments, it was necessary to examine the course of previous legislation on this subject. The office of Amín or Munsif was established under Regulation XL of 1793, and the selection and appointment of such officers was placed under the control of the Sadr Díwání Adálat. By Regulation XLIX of 1803, the office of Sadr Amín, or Native Head Commissioner, was constituted, and similar provision was made regarding the appointment of those officers. By Regulation XXIII of 1814, that control over the selection and appointment of both these classes of officers was transferred to the Provincial Courts, and those Courts continued to direct the appointments of Sadr Amíns and Munsifs up to 1831. By Regulation V of that year it was enacted, in supersession of the former law regarding the appointment of Sadr Amíns and Munsifs, that the Governor General in Council should have power

to direct the manner in which the selection of these officers should be regulated. Up to the present time, no later enactment on this subject had been passed, and the existing practice in regard to the appointment of both Sadr Amíns and Munsifs had arisen out of the provisions of that law. Since so much stress had been laid by the High Court on the fact of the originally proposed selection and appointment of Munsifs by the Government being in reversal of the existing *law* and practice, it was worthy of note that the directly contrary system of selection and appointment of Sadr Amíns had resulted from the same provision of the law which governed the existing practice in the appointment of Munsifs, and from this fact he argued that the existing law, Regulation V of 1831, in supersession of the principle affirmed by previous legislation on the subject, vested in the Government the power of initiating action in the matter of the selection and appointment of subordinate judicial officers, and that, consequently, the proposal contained in the Bill as originally drawn, to vest the power of appointment of Munsifs in the Local Government, involved no innovation on the course of legislation that had taken place on this subject. Nevertheless, the proposal did involve a change of a very long established practice, and as no necessity for the change of system could be urged from the test of past experience of the working of the existing one, the Committee, as he before remarked, in deference to the strong remonstrance of the Judges of the High Court, had adopted the form of appointment set forth in the amended Bill. For the sake of uniformity, that form of appointment had been made applicable also to the case of Subordinate Judges: the change of system introduced by this extension was more apparent than real; it would practically involve no material alteration of the present mode of dealing with such appointments, whilst, if the change was not adopted, the principle on which the High Court claimed the power of selection of Munsifs and that power was conceded to them was lost sight of, and the object which that Court had in view was liable to be frustrated. For, it would be observed that, neither in the existing law, nor in the Bill as first drawn, was there any provision restricting the choice of the Government, in its appointment of the higher classes of Subordinate Judges, to the ranks of the Munsifs selected by the Court, and, consequently, the Court would have no guarantee that the Benches of the more important subordinate judicial Courts would be filled by the persons originally selected by itself. He did not say that it was likely that the Government would take other fields of selection than that of the specially trained judicial class—the Munsifs—for the higher posts of the subordinate judicial service, but he said that it would have legal immunity in so doing, and that, in legislating on the subject, they were bound to take note of such a possible contingency and provide against it.

The next change of substance to which he wished to advert was the restoration, or rather confirmation, of the existing limits of the appellate jurisdiction of the District Judge and the High Court.

In the Bill as originally drawn, it was proposed to raise the appellate jurisdiction of the District Judges to include suits whose subject-matter in value or amount was equal to, but did not exceed, rupees ten thousand. The main idea which suggested this important change in the existing law was that, under the operation of the new mode of valuation of suits relating to land introduced by the Stamp Act of last year, the appellate jurisdiction of the District Judges would be virtually curtailed to a considerable extent, whilst the High Court would be swamped by the proportionate increase of appeals that would thus be transferred to that Court from the several districts. The Committee found that the result of the change of the Stamp Law had not hitherto been in the least degree in accordance with this anticipation.

He held a return of regular appeals preferred to the High Court during the months of June, July and August for the last four years, *i. e.*, for the three years immediately preceding the change of the Stamp Law, and for the year in which that change took effect; the average aggregate number of appeals during those months in the three years previous to the passing of the new Stamp Act was 125; whilst the aggregate of the three months subsequent to that change was 102. Allowing for the effects of the increased duty in causing a temporary decrease in the institution of appeals, and assuming that such general decrease would not be of permanent duration, it was nevertheless clear that the anticipation upon which the proposed change of the law mainly rested would never be realized. On other grounds, the Committee held that it was inexpedient to amend the existing law on this subject by the adoption of the proposed increased appellate jurisdiction of the District Judges. They considered that it was very desirable that, in suits of such importance as those covered by the originally proposed alteration of the law, there should be an appeal to the High Court upon the facts. They observed that one result of that proposed change, if adopted, would have been that, in suits whose subject-matter in amount or value was rupees ten thousand, there would have been an appeal from the decision of the District Judge as to the facts of the case direct to the Privy Council, without any intervention of the High Court. Such a possible contingency, in the opinion of the Committee, was undesirable. It was argued, amongst other grounds for the change proposed on the introduction of the Bill, that the measure would have the advantage of providing for the record of the judgment of the District Judge on regular appeal, and

that of the High Court in special appeal, in cases involving subject-matters of the value of rupees ten thousand ultimately appealable to the Privy Council.

He could not recognize the force of this argument. The regular appeal which lay to the High Court in such cases in the present state of the law necessarily covered any question that could arise in special appeal, and the record of the High Court's judgment upon the facts in such cases must be surely of greater value than that of the District Judge's decision, and was likely to be so appreciated by those whose interests were most affected by the question. The Committee proposed, therefore, to re-enact, in substance, the existing law on this subject.

He now came to what might be held to be the most important provision of this Bill, the investment of the ordinary subordinate Civil Courts with the jurisdiction of Small Cause Courts within certain pecuniary and local limits.

In the Bill as amended by the Select Committee, this power of investment was enlarged so as to bring Munsifs within its application, and having regard to the various exigencies of different localities, as well as to the qualifications of the judicial officers available for the exercise of final jurisdiction, the principle of varying pecuniary limits had been introduced. On this point he should make no comment, as he believed that his Hon'ble friend Mr. Maine would, when the Committee's Report was taken into consideration, move, in the form of an amendment, the substitution of fixed limits for the present provision of the Bill, and to this deviation from the Committee's proposals he had acceded, as it was perhaps on the whole better calculated to promote the successful working of this new jurisdiction.

The investment of Munsifs with any final jurisdiction in the trial of suits, however limited as to value, was doubtless a most important experiment; but whilst, on the one hand, the very superior qualifications of the Munsifs of the present day seemed to justify some step in this direction, on the other, the excess to which the right of appeal was carried and promoted a litigious spirit amongst the people called for some check in the interests of the people themselves. The statistics of original suits and appeals instituted went to show that, in suits of the smallest amount or value, the right of appeal was by far the most largely availed of, and that its assertion to a certain extent decreased in proportion to the rise in value of the subject-matter of litigation. He found, from a return which was prepared in connection with the enquiry into the working of the Stamp Act, that the number of appeals in suits up to ten rupees' value, instituted in the Civil Courts of the North-Western Provinces during the third quarter of 1866, was

202, and the number of original suits was 534; whilst the number of appeals in suits ranging between ten rupees and one thousand rupees in value, instituted during the same period, was 766, and the number of original suits was 7660.

The returns for the third quarter of 1867 exhibited nearly similar results, so that, whilst in the litigation involving the far greater amount or value the proportion of appeals to original suits was 1:10, in suits of the most trivial description that proportion rose to about 1¼:1.

When it was considered that the mass of litigation throughout the provinces to which this Bill was intended to apply was of the class cognizable by Small Cause Courts—for he saw from the returns of litigation in the Lower Provinces of Bengal that, in addition to some 40,000 suits instituted in the regularly constituted Small Cause Courts, there were no less than 80,000 of this class of suits instituted in the ordinary Civil Courts, whilst the aggregate of all other classes of suits did not exceed 60,000—it might reasonably be said that the measure which the amended Bill contemplated was recommended on no insufficient grounds. The Committee very much regretted that their proposal in regard to the absolute investment of these subordinate Courts with this extent of final jurisdiction did not meet with the approval of the Judges of the High Court. The High Court desired to encumber the exercise, by these Courts, of the powers of Small Cause Courts, with a form of procedure foreign to the principle on which the business of those Courts was conducted, and further to vest a power of control in the District Judge which might, and probably would, in effect, render nugatory the advantage to be derived from the finality of jurisdiction which the provisions of the amended Bill contemplated. The Committee, with all deference for the High Court's opinion on this question, were unwilling to adopt the proposed restriction on the exercise of final jurisdiction by the Subordinate Judges and Munsifs who might be selected for investment with Small Cause Court powers.

The other alterations of the Bill proposed by the Select Committee were of less importance. He would proceed to notice such of them as seemed to call for remark. Provision had been made for the transfer of the existing Principal Sadr Amíns, Sadr Amíns and Munsifs to the new offices constituted by the Bill, without re-appointment, the object of which was to prevent the sudden and general interruption of business throughout the provinces to which the Bill would apply, were it necessary for the Government to make fresh appointments, and for the judicial officers to subscribe fresh declarations, ere they could enter on the

duties of their offices under this Bill. With a similar view, it was proposed to give jurisdiction to the Subordinate Judges and Munsifs over all proceedings pending at the time of the passing of this Bill in the Courts of the several officers for whom they were substituted. This had been so arranged to suit public convenience to the utmost possible extent, it being provided, even, that cases pending in the Courts of Sadr Amíns, which it was proposed to abolish, should be adjudicated by the Munsif in charge of the Sadr Munsiff, in order to save suitors the expense and trouble of making fresh arrangements for the conduct of such cases in different places and before different Courts. It had been suggested to him that this provision need not extend to suits only just instituted, and in which no evidence or issues had been recorded. He thought, however, that, where vakíls had been engaged and steps taken for the conduct of the suit, even though no evidence or issues had been recorded, the change of Court would still be open, in some degree, to similar objection. He would even have wished to make like provision, as far as practicable, for cases tried by Sadr Amíns, and remanded on appeal subsequently to the passing of this Bill, but there would be difficulty in the way of such provision, and it would be better to relinquish it. The Bill as originally drawn contained detailed provisions for cases of misfeazance by subordinate judicial officers: they were in fact certain clauses of Act XXXVII of 1850, transferred to this Bill with certain alterations and emendations adapted to the change of criminal procedure since the passing of that enactment. The Committee deemed it advisable to exclude those sections, leaving subordinate judicial officers to be dealt with, in the matter of charges of misfeazance, under the general law applicable to all public servants in such cases.

The original Bill contained no provision for the appointment of the ministerial officers of the Courts of the Subordinate Judges and Munsifs, although it contemplated the repeal of the law by which such provision was made in regard to the ministerial establishments of the Courts of Principal Sadr Amíns, Sadr Amíns and Munsifs. In the amended Bill, it was proposed to re-enact the substance of those provisions of the existing law, with the addition of certain powers of removal and other punishment of ministerial officers in cases of misconduct, subject to the usual course of appeal prescribed by the Code of Criminal Procedure.

There was also a suggestion from the High Court of the North-Western Provinces for a provision to empower the Local Government to invest Principal Sadr Amíns, *i. e.*, Subordinate Judges, with the powers of Munsifs. He thought that, in Lower Bengal, there had not been a case in which a Principal Sadr Amín had been vested with the powers of a Munsif, and that, there, the

provision would hardly be needed ; but he believed that there were such cases in the North-Western Provinces, and at all events, as the High Court had suggested it, the Select Committee had no doubt that a provision to that effect should be enacted.

The next and last alteration made by the Committee which he would notice was the power of reference as to civil proceedings. The old law restricted that power to the reference of what were called "miscellaneous" and "summary" proceedings, terms which were no doubt somewhat undefined. The section in the Bill had been so modified as to include Munsifs as having power, on reference from the District Judge, to take cognizance of referred civil proceedings. The object was to provide for certain cases in which local investigations by subordinate judicial officers would be of very great advantage to the proper adjudication of the cases. He was aware that, in cases under Act XXVII of 1860 (the Certificate Act), and Act XIX of 1841, by which curators of the property of deceased persons were appointed in cases of wrongful possession of such property being acquired or threatened, there were frequently conflicting claims in regard to property of trifling value, which might be very well disposed of by the Munsif, who could himself conduct the local investigation, but which the Judge had no power to refer for that purpose under the existing law.

With those remarks he would move that the Report of the Select Committee be considered by the Council. He wished only to add that, if the motion was carried, he would afterwards move a slight amendment in one of the sections of the Bill. He referred to section 13. It was intended to extend the power of reference of appeals to Subordinate Judges or Principal Sadr Amins which was at present vested in the District Judge, subject of course to the orders of the High Court, so as to admit of its application to appeals from the orders of the Revenue Courts. Whatever considerations might have dictated the reservation of such appeals to the cognizance of the Judge at the time of the passing of Act X of 1859, could hardly apply at present; and there seemed no reason (he knew that the North-Western Provinces' High Court held that opinion) why appeals from the orders of the Revenue Courts should not be disposed of by the Subordinate Judges. Such a provision would have the effect of relieving the District Judge of work of a not important character, but which took up a great deal of time which would then be at his disposal for the trial of original suits, a matter which the High Court considered very desirable. Anything that would relieve District Judges in this respect, without a sacrifice of the security of the interests of the people who came before the Courts, seemed very desirable, and consequently it was proposed in the Bill, originally, by leaving the term

"any appeals" to include revenue appeals. It was afterwards found necessary, on further consideration, to introduce the words "passed by Munsifs," and the introduction of those words made the provision no longer applicable to revenue appeals. This consequence was at the time overlooked, and he now proposed to repair the oversight by the introduction of a few words in the section above referred to, which would include appeals from Revenue Courts.

The Hon'ble SIR RICHARD TEMPLE said there was one point in the statement which had just been made to which he would solicit the attention of the Council, and it was this. In the Committee's Report, paragraph 3, it was said that—

"In deference to the opinion of the Judges of the High Court at Fort William, the virtual appointment of Munsifs, which, in supersession of the existing practice, the Bill, as originally drawn, proposed to confer on the Local Government, has, in the Bill as amended by us, been vested in the High Courts."

Then the 4th paragraph went on to say—

"For the sake of uniformity of practice, this provision has been extended to the appointment of Subordinate Judges."

This was a point on which he spoke with the greatest hesitation and deference in the presence of His Honour the Lieutenant Governor of Bengal; but SIR R. TEMPLE submitted that this proposal did involve a serious sacrifice of the power of the Lieutenant Governor. He understood, subject to correction, that the appointment of Munsifs had virtually and practically rested with the High Court, but that the appointment of officers above that grade had rested in the Lieutenant Governor, on the recommendation of the High Court. That was to say, formerly the Sadr Court, and latterly the High Court, had submitted a list of persons eligible for appointment to the higher grade, and that their recommendations had hitherto received the sanction of the Lieutenant Governor. Now, granting that, perhaps, as the appointment of Munsifs had rested with the High Court, this Bill should leave that power as it stood, he could not admit the policy of the concession of the additional power proposed to be given to the High Court, of appointing Subordinate Judges. He admitted that the opinion of the High Court would have great influence in those appointments; nevertheless, to make over that power absolutely by law to the High Court involved an administrative principle resulting in a considerable sacrifice of the powers of the Lieutenant Governor. He did not propose any amendment, but if any other Hon'ble Member concurred in his opinion, he would be quite willing to assume the responsibility of moving an amendment to this effect, that the power of the

appointment of Munsifs vested in the High Court did not extend to the appointment of Subordinate Judges.

His Honour the Lieutenant Governor said that, as a member of the Select Committee, he had signed the Report made by them; but if the Council had referred to the letter written by the Government of Bengal, it might have appeared to them that he had no very strong opinion in favour of the provision on which Sir Richard Temple had been commenting. In fact, in one of the points adverted to, he should himself, on principle, be disposed to go further than Sir R. Temple went. His Honour thought that the essential point in this case was the original appointment of gentlemen to the judicial service of the Government. There seemed to him to be greater fitness, as regarded the selection of those who were already members of the judicial service for advancement to higher posts, that such selection should be made by the chief judicial authority in the country, than that that authority should have the original selection of gentlemen for the judicial service. There were many reasons that might be given why the power of selecting gentlemen from the community at large, or from certain classes of that community, to enter into the judicial service, should rest with the Executive Government, rather than with the judicial authority. But His Honour was influenced to agree to the opposite conclusion from the consideration that the appointment of Munsifs had, in point of fact, for many years past, always rested with the Sadr Court, and afterwards with the High Court, and because he did not see his way to asserting positively that there would be such clear gain in making the change as would justify him in opposing his judgment to the strongly expressed opinion of the High Court. On that ground he had consented to the alteration made by the Select Committee, namely, to leave the appointment of Munsifs, as it always had been, in the hands of the High Court. If, however, the question was raised as a question of principle, His Honour would feel bound to state his opinion that those appointments ought rather to rest with the Executive Government. With respect to promotion to the office of Sadr Amín and Principal Sadr Amín, he had not thought it worth while to object to this change made by the Bill, because it was hardly other than a nominal change. He thought the Hon'ble Mr. Cockerell had hardly stated that point strongly enough. He believed that, as a fact, every such promotion had always been virtually made by the Sadr and the High Courts.

The Hon'ble Mr. Maine agreed with His Honour the Lieutenant Governor that much less was to be said for giving the Local Government the appointment of Subordinate Judges, than for giving it the appointment of Munsifs. The

High Court alone could in most cases judge whether the judicial performances of a Munsif entitled him to promotion to a Subordinate Judgeship, for Subordinate Judges would be almost exclusively promoted Munsifs. In point of fact the Local Government was understood now to apply to the High Court for the means of judging the worthiness of candidates for the higher judicial appointments, and the Committee had in this respect only maintained the existing practice. If the section were kept as it stood, it would pretty much represent the system which obtained in England. The High Court would nominate, and the Executive Government would appoint, just as the Lord Chancellor nominated at home, and the Crown appointed.

His Excellency the President said that he agreed with Sir Richard Temple that it would be desirable that the power of appointing the subordinate judicial officers should be vested in the Executive Government. His Excellency thought the High Court should nominate, but there should rest with the Local Government a power of rejection: or the Court might send up two or more names, and the Local Government might select from amongst them. It seemed to His Excellency that it was an advantage to the nominee to receive his appointment wholly from the Lieutenant Governor of the Province, and that a person thus appointed might acquire greater influence and respect. At the same time the Lieutenant Governor might be assisted by the advice and recommendation of the High Court. An enactment that the Court was to nominate, and that the Government must appoint, would, His Excellency thought, never work well.

The Hon'ble Mr. Cockerell said that it seemed to him that the Local Government, in its opportunities of judging of the capacity and merits of the subordinate judicial officers, was not at all in the same position as it was in regard to its executive officers. The Lieutenant Governor had very few opportunities indeed of judging whether Subordinate Judges had discharged their duties with success; their decisions could only come before him in a very casual and indirect way; they did not make any report to the Local Government, by which their ability and intelligence could be ascertained; and, in point of fact, the Government had found such difficulty that it invariably had communicated demi-officially with the High Court, asking them to state what Munsif or Sadr Amín was considered fit for promotion.

[His Honour the Lieutenant Governor said that he believed such communications were made officially, merely asking for the usual list.]

The Hon'ble Mr. Cockerell remembered two or three cases of such demi-official communications during the period for which he officiated as Secretary to

the Government of Bengal, and he spoke from his experience of the practice then prevailing. Therefore, the Bill really did no more than confirm the existing practice already noticed in the letter of the High Court; but if the suggestions there made were carried out, and the law remained as it stood, the result would follow that the High Court's object in desiring to retain the power of appointing Munsifs, in order that it might have a thorough practical control over the judicial Bench, would not be attained; because there was nothing in the law to restrict the choice of the Local Government to Munsifs in the appointment of Subordinate Judges. There would be nothing to prevent the Lieutenant Governor from making a selection out of the deserving executive officers, and appointing them to be Subordinate Judges. It was to remedy that defect and inconsistency in the existing law that MR. COCKERELL would strongly urge that, if the High Court was to have the nomination of Munsifs, they should also have the power of selection of Subordinate Judges.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE moved an amendment to the effect that the power of appointing Munsifs and Subordinate Judges be vested in the Local Government as originally proposed in the Bill.

The Hon'ble MR. STRACHEY said that, although as a matter of principle he should have been inclined to admit that what the Hon'ble Sir Richard Temple said was perfectly fair, and that, theoretically, it would be better that such power of appointing Judges should rest with the Local Government rather than with the High Court, it seemed to MR. STRACHEY that the objection was rather theoretical than practical. His Honour the Lieutenant Governor had told them that, as a matter of fact, this Bill really did nothing more than confirm the practice followed for years, and it was hardly too much to say that, practically, the High Court had what it was now proposed to recognize by law. It seemed to MR. STRACHEY, therefore, that there was at any rate no harm in vesting the nominal power where the actual power had always rested, and where apparently it still rested. And, generally, he came to the conclusion that he could not support the amendment.

HIS HONOUR THE LIEUTENANT GOVERNOR said that, if Sir Richard Temple's amendment took the form of saying that appointments to Munsifships should be made by the Local Government, and that appointments to Subordinate Judgeships should be made from the Munsifs on the nomination of the High Court, he should vote for the amendment. The Hon'ble Mr. Cockerell had laid what

appeared to His Honour great stress on the danger that might arise from giving the Government power to appoint Subordinate Judges without any legal restraint. But he did not understand why there should be more danger in entrusting the power to Government, than there was in the section as it stood in the Bill. Under the Bill as it stood, the High Court might appoint anybody to be a Subordinate Judge; for instance, the High Court might appoint a gentleman from the Bar who did not understand a word of the vernacular language, and why it should be supposed that there was more danger in putting similar power in the hands of the Executive Government, he did not understand.

The Hon'ble Mr. Taylor expressed concurrence in the views of the Lieutenant Governor. If Sir Richard Temple's proposed amendment were put in the form suggested by His Honour, he (Mr. Taylor) should be disposed to give it his support.

The Hon'ble Mr. Maine asked the Council, before it accepted an amendment which the High Court would regard as derogating from its authority, to listen to the language of the letter which the Court had addressed to the Government of Bengal. That letter said—

"It has been and still is one of the great objects of the High Court to raise, as far as possible, the character and status and efficiency of the Munsifs. They are glad to find that their efforts have not been fruitless, and that one of the objects of the Bill under consideration is to increase the jurisdiction of that class of officers."

To that argument of the Court the greatest weight was due. The High Court, as a fact, had hitherto had the appointment of Munsifs in their hands, and the very ground of the most important part of the Bill was the complete success of the system. The Court went on to say—

"Without laying claim to any very extensive degree of knowledge, the Judges consider that it may be fairly conceded that the High Court has at least as good an opportunity of judging of the qualifications of the persons to be selected for the offices of Munsifs for the whole country, as the Commissioners, Judges, Collectors, officers of the Education Department, and the numerous executive officers scattered over the country, and to whom allusion was made by the mover of the Bill.

But another ground alleged for the proposed change was that, in the judgment of the mover, it was not advisable to place, in any judicial body, any power which did not belong to judicial functions."

Then followed a passage, part of which, in the letter which had reached the Council, had been marked illegible; but the meaning was clear and was as follows:—If this doctrine was correct, it would

"strike at the root of the power of superintendence and supervision over the subordinate Courts which has been entrusted to the High Court by Parliament, and it is in direct opposition to section 7 of the Bill, which vests in the Judge of the District the power of making temporary appointments which, according to the views expressed by the mover, seem to be treated as nominations for the permanent appointments. He says 'the Judge would then be called upon to state the qualifications of the person he had nominated, and it would rest with the Local Government to make the permanent appointment.' The High Court has no desire whatever to retain the power of appointing Munsifs or any other powers for which they are not considered by Government to be competent. Nor do they object to the transfer of the patronage to the Local Government, or wish to interfere in any way as to the selections to be made, if His Excellency the Governor General, in his Legislative Council, from experience of the past, considers that the Local Government has better means of ascertaining the qualifications of candidates than the High Court. The Court has made the above remarks solely with the desire of correcting an erroneous impression, upon which the Governor General in Legislative Council seems to have acted, in proposing by the Bill under consideration to remove the appointment of Munsifs from the High Court, and vesting it in the Local Government. They are also desirous of protecting themselves, lest, by silence, they should be supposed to have assented to the reasons which have been publicly put forward in the Gazette as the grounds for the transfer proposed by sections 4 and 7 of the Bill."

Perhaps it was hardly correct to say that anything which had hitherto been done amounted to a proposal of the Governor General in Legislative Council to remove the appointment of Munsifs from the High Court. But MR. MAINE entirely concurred in the position that the practical question was, whether the High Court had hitherto performed its duty of selection well, and, as for the theoretical difficulty, it was got rid of by the consideration that Parliament had expressly already conferred on the High Court semi-executive functions.

The Hon'ble MR. COCKERELL said that, with reference to the remarks of His Honour the Lieutenant Governor, he wished to observe that he had perhaps not rendered his meaning sufficiently clear in regard to the objection which he entertained to letting the appointment of the higher class of subordinate judicial officers rest with the Local Government, while that of the lower class remained in the hands of the High Court. He believed that the whole principle on which the High Court contended for the retention of the power of appointment in its hand was, that the Court, as constituting the chief supervising authority, was mainly responsible for the proper administration of the law; and that its controlling authority, and consequently the means of ensuring success in such administration, would be weakened, if the selection of persons for employment in the judicial service was not reserved to it. This contention necessarily

rested on the assumption that the choice of persons for appointment to the higher grade of subordinate judicial officers must be made from the lower grade, *i. e.*, the then existing staff of Munsifs originally selected and appointed by the High Court. But if the field of selection of persons for appointment to the higher grade was not confined to that class of judicial officers—and under the existing law it was not so restricted—then, the very principle for which the High Court contended fell to the ground.

The Hon'ble SIR RICHARD TEMPLE said he entirely accepted the terms of the amendment as suggested by His Honour the Lieutenant Governor. What he intended to move was, that the appointment of Munsifs and of Subordinate Judges should rest with the Local Government.

[The Hon'ble MR. MAINE remarked that the Hon'ble Sir Richard Temple had originally confined his amendment to Subordinate Judges only.]

The Hon'ble SIR R. TEMPLE continued—But after hearing the arguments that His Honour the Lieutenant Governor had advanced, he accepted the terms of the amendment as suggested by His Honour, namely, that Munsifs should, in the first instance, be entirely appointed by the Lieutenant Governor, and that the subsequent appointment to the office of Subordinate Judge on promotion should be made by the Government on the recommendation of the High Court. If that amendment were carried, it would not in any way derogate from the authority of the High Court. Practically, the selection would chiefly, if not entirely, lie with the High Court; but there was an extreme difference between the High Court *nominating* and practically exercising influence over these appointments, and the Court being vested absolutely by law with the power of appointing those important judicial officers. SIR R. TEMPLE submitted that the High Court would still retain that influence, but in preserving the authority of the Local Government over the judicial service, it would greatly add to the vigour of the administration, and would maintain what in India was of so much importance, namely, the authority of the Lieutenant Governor. If that principle was applicable to Bengal, it would, SIR R. TEMPLE believed, be applicable to all other Provinces, and therefore it was an administrative question on which he ventured to maintain his opinion.

There were one or two points in the letter of the High Court which had been referred to, on which, with deference, he would make one or two observations. He understood that letter ran to the effect that the appointment to these offices was a judicial power. If he was correct in that view of the letter, he would submit that "judicial" meant the trial and decision of cases, but the administrative function of appointing officers to the judicial service was

indeed of an executive character. If he understood rightly, there was something said to the effect that such an amendment as this would derogate from the executive power given by Parliament to the High Courts. If that were so, he would reply that it was to be presumed that whatever power Parliament thought fit to be vested in the High Courts, was so vested by Act of Parliament, and the fact of Parliament not having hitherto vested the High Courts with this power of making these appointments was an excellent reason for this legislature not going further in vesting the Court with powers with which the imperial legislature did not vest them. It had been said that the power of selection must be reserved to the High Courts. To that he had to answer that, practically speaking, such selection would be resorted to in practice, but nevertheless the final sanction and confirmation of the Local Government ought to be retained.

With these observations he would commend the subject-matter of the amendment to the Council.

The Hon'ble MR. MAINE said that he must really beg the Council to pause before it accepted his Hon'ble friend's amendment. Sir R. Temple had now pretty nearly reversed the proposal which he at first made to the Council. The circumstance that the second amendment differed so greatly from the first afforded some ground for saying that his Hon'ble friend had not bestowed sufficient attention on this very serious question. On what ground could the Council take away from the High Court all power over appointments of Munsifs? Only on the ground that the powers it had hitherto exercised had been mismanaged or abused. This was the direct contrary of the assumption made by the Bill. MR. MAINE could not accept his Hon'ble friend's observations on the argument of the High Court based on the authority conferred on it by Parliament. From the very construction his Hon'ble friend had put on that argument, he might have inferred that it was never used in the sense he supposed. What the High Court plainly urged was, that the only ground on which these appointments could be taken away from it consisted in the theoretical objection to appointment by any authority not of an executive character; and the Court argued that this theoretical difficulty was disposed of by the action of Parliament in conferring on the Court powers of superintendence and supervision which were in their nature not judicial but executive. The Bill as amended carried on its face the assumption that the practical working of the existing system had been excellent. But it saved the theoretical principle by providing that the Local Government should appoint on the nomination of the High Court. He earnestly requested the Council to remember that the burthen of show-

ing that a better system could be substituted rested on those who proposed the change.

HIS HONOUR THE LIEUTENANT GOVERNOR wished to observe, in explanation of one remark which the Hon'ble Mr. Maine had made, that he did not think that the way Mr. Maine put the case to the Council was entirely fair. He had pressed on the Council that the *only* ground on which the power of appointing Munsifs could be taken away from the High Court was, that the Court had misused the power. Now, in saying this, Mr. Maine said in fact that he (THE LIEUTENANT GOVERNOR) had asserted that the High Court had misused its power. HIS HONOUR need hardly say that nothing could be further from his intention than to suggest such an idea. Nobody knew better than he did that the power of the High Court in making these appointments had, as the Hon'ble Mr. Maine had said, been exercised in the most excellent manner. HIS HONOUR could not at all admit that the only ground on which the power could be taken away was the assumption that it had been abused, and he was at a loss to understand how Mr Maine could have made such a statement, for Mr. Maine himself must virtually have been an assenting party to the Bill as originally drawn, and, on the first occasion of his addressing the Council to-day, he had himself admitted that there were reasons which might be urged in favour of giving the power to the executive authority. HIS HONOUR could only say for himself that, in expressing an opinion in favour of a power of this kind resting with the executive, rather than with the judicial, authority, he had not the very remotest intention of reflecting in any way upon the High Court.

The Hon'ble SIR RICHARD TEMPLE said he understood the Hon'ble Mr. Maine to say that his amendment would deprive the High Courts of the power which they now legally possessed. With extreme deference, SIR R. TEMPLE would submit that the Courts possessed that power by courtesy and practice, and not exactly by law; and that, because the present Bill proposed to vest the Courts, by law, with what they now possessed by executive rule only, he objected to it. And, as to his having reversed his amendment as supposed by the Hon'ble Mr. Maine, he would explain that he did not exactly reverse it, but only modified and enlarged it, in deference to the Lieutenant Governor's views.

The Hon'ble MAJOR GENERAL SIR H. M. DURAND said that a good deal of discussion had arisen on a point which appeared to him hardly to have required it. Practically, the discussion had been based on the words "and the Local Government shall appoint such person accordingly." Now the word "appoint,"

in its ordinary acceptation, when applied to the Governor General or to a Lieutenant Governor, was not understood to exclude, but to involve without specification, the powers of approval or disapproval. He thought this view was supported by the second clause of section 5, where the Local Government nominated and appointed if the High Court failed to nominate. He considered this view also borne out by the penultimate clause, which ruled that every Subordinate Judge and Munsif so appointed should hold office during the pleasure of the Local Government. The legal position seemed to him an incorrect one, which made the privilege to nominate circumscribe the inherent powers ordinarily conveyed by the word 'appoint.'

The Hon'ble MR. MAINE said that the undoubted intention of the Select Committee was, that the Local Government should appoint the person nominated by the High Court, and no other. If that intention was not carried out, stricter language must be employed. But with deference to his Hon'ble and gallant friend, MR. MAINE must really say that the words of the section were not open to doubt:—

"Whenever the office of a Subordinate Judge or Munsif under this Act is vacant, the High Court may nominate such person as it thinks proper to fill such office, and the Local Government shall appoint such person accordingly. Provided that, if no such nomination is made within a reasonable time after the occurrence of the vacancy, the Local Government shall nominate and appoint to the office such person as it thinks proper."

HIS EXCELLENCY THE PRESIDENT said that he would adjourn the consideration of the Bill. He did that reluctantly, because we were coming towards the end of the session. But he thought an important matter of this kind ought not to be determined without due consideration. There was, moreover, another amendment which the Hon'ble Mr. Cockerell intended to move, but of which HIS EXCELLENCY had had no notice, and which seemed to him to involve matter worthy of serious consideration, namely, the power of giving subordinate judicial officers jurisdiction to hear appeals from the decisions of Collectors and Deputy Collectors. On the whole, therefore, HIS EXCELLENCY thought it desirable to adjourn the debate to the next meeting of the Council.

The further consideration of the Bill was then postponed.

HIGH COURT FEES' BILL.

The Hon'ble MR. COCKERELL also moved that the Report of the Select Committee on the Bill to provide for the collection, by means of stamps, of fees payable in the High Court of Judicature at Fort William, be taken into consideration. The alterations made by the Select Committee were confined, he

might say entirely, to the re-arrangement of some of the sections and a few verbal emendations. In this, the Committee had been guided by suggestions kindly furnished by the Chief Justice of the local High Court and the First Judge of the Calcutta Court of Small Causes. The Bill as now amended would, he thought, be found to present no difficulty in operation. The other High Courts had been consulted, but as yet no replies had come in. Seeing, however, that the provision in section 3 contemplated the gradual extension of the Act to those Courts, and not its immediate operation on passing into law, there was no necessity for waiting until those replies were received.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned till the 24th April 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 17*th April* 1868.

Office Supdt. Govt. Printing—

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 24th April 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble H. Crooke.
The Hon'ble Sir R. Temple, K. C. S. I.

PRINCIPAL SADR AMÍNS, SADR AMÍNS AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL moved that the consideration of the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes, be resumed.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said that, before proceeding with the motion which stood first on the List of Business, he proposed to submit to the Council the amendments of which he had given notice. In so doing, he thought it was unnecessary to recapitulate the facts of the case, or to advert particularly to the arguments urged at the last meeting, all of which must be fresh in the recollection of the Council. The starting-point of objection taken by the Hon'ble Sir Richard Temple was that the Bill proposed to enlarge the powers which the High Court at present exercised in the matter of the appointment of the subordinate judicial officers; and MR. COCKERELL thought it was to be inferred from the Hon'ble Member's speech that, if no such extension of the existing law had been contemplated by the Bill, he would have been content to let the Bill pass. The amendment which he (MR. COCKERELL) proposed, therefore, contemplated merely the re-enactment of the existing law as laid down in Regulation V of 1831; and he ventured to hope that the Hon'ble Sir Richard Temple would be disposed to accept this amendment in lieu of that of which he had given notice. MR. COCKERELL thought he might say that the discussion which took place on this question at the last meeting sufficiently indicated the divided

opinion on the part of several Hon'ble Members on the subject, and under all the circumstances of the case, and looking to that conflict of opinion, it seemed inexpedient to make any substantive alteration of the existing law on this subject. With those remarks he would move that, in lieu of section five, the following be substituted :—

"5. Whenever the office of a Subordinate Judge under this Act is vacant, the Local Government may appoint to the office such person as it thinks proper.

Whenever the office of a Munsif under this Act is vacant, the High Court shall nominate such person as it thinks fit to fill such office, and the Local Government shall appoint him accordingly.

It shall be lawful for the Local Government, with the sanction of the Governor General of India in Council, to make rules as to the qualifications of persons to be nominated Munsifs under this Act, and from time to time to alter and add to the rules so made.

When such rules shall have been made, no person, notwithstanding anything hereinbefore contained, shall be nominated to the office of Munsif, unless he possesses the qualifications prescribed by the said rules."

The Hon'ble SIR RICHARD TEMPLE said, the Hon'ble Mr. Cockerell had most correctly described the object which he (SIR RICHARD TEMPLE) had really had at heart when he addressed the Council at its last meeting, which object was to prevent any additional power being conferred on the High Court by this legislature. In doing so, he wished to speak with every proper respect and deference to that great tribunal. But now he observed that the object in view had been substantially and effectually ensured by what he might term the revised amendment of the Hon'ble Mr. Cockerell. According to that amendment, the future practice as laid down by law would be in accordance with the present usage, and no additional power would be conferred on the High Court. Under these circumstances, and also believing that the Hon'ble Mr. Cockerell's amendment would be approved, generally at least, by the Council, he begged leave, with the permission of the President, to withdraw the amendment of which he had given notice.

The Hon'ble MR. MAINE said, it appeared to him that, considering the differences of opinion that had disclosed themselves in the Council, it was expedient to maintain the *status quo ante* by re-enacting the existing law. He begged, therefore, His Excellency's permission to withdraw his amendment. All he would say was, that it was not to be inferred from the strong expressions which he had used at the last meeting (expressions which he was ready to admit were perhaps stronger than the occasion demanded, but which were explained by the fact that the proposal of his Hon'ble friend Sir R. Temple took him

completely by surprise), that he (MR. MAINE) intended to commit himself against a well-considered and comprehensive measure for creating a department of administrative justice under the Government of Bengal or any other Local Government. There was, he would add, one expression in Mr. Cockerell's amendment which perhaps might be construed as not precisely reproducing the existing law. The power to make rules prescribing qualifications was given by the Regulation of 1831 to the Governor General in Council. Here it was given to the Local Government with the sanction of the Governor General in Council. But the fact was that the Governor General in Council of 1831 was not precisely the Governor General in Council of the present day. MR. MAINE thought that his Hon'ble friend had accurately translated the expression of the old law into the language of the present day by the phraseology he had employed.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said he would move the introduction of the other amendment of which he had given notice, and which seemed to follow as a necessary consequence of the affirmation of the principle in the acceptance of his first amendment. This amendment contemplated simply the re-enactment of the provisions of section VI of Regulation V of 1831, with this slight distinction, that it proposed to vest in the High Court the power of suspending Subordinate Judges, which that Regulation vested in the District Judge. The alteration, it would be observed, was one of detail, not of principle, and had been thought desirable with reference to the present status and circumstances of the Subordinate Judges. With these remarks, he would move that, in lieu of section 10, the following be substituted :—

"10. The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

Whenever the High Court suspends any such Subordinate Judge, it shall forthwith report to the Local Government the circumstances of such suspension, and the Local Government may direct him to be removed from his office, or make such other order as the case may require.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the High Court a full report of the case with the evidence, and the High Court shall make such order in the matter as it thinks fit.

The High Court may at any time by order remove from his office or suspend any Munsif subject to its control."

The Motion was put and agreed to.

The Hon'ble MR. MAINE said he had an amendment of no very great importance to propose in section 20. The provisions of the section itself had been originally suggested by the High Court of the North-Western Provinces. It was alleged that the Local Government had not thought fit to deny what it considered to be the advantage of a Small Cause Court to certain districts where there was hardly work sufficient for such a Court. The result was that a comparatively highly paid officer was sometimes not rendering to the public services commensurate with his salary. It was thought, therefore, that some expense might be saved by investing selected Principal Sadr Amíns and Munsifs with limited Small Cause Court jurisdiction. When the proposal came before the High Court of the Lower Provinces, that Court recommended that all Principal Sadr Amíns and all Munsifs should be invested with this limited jurisdiction. But it proposed certain modifications of the Small Cause Court system intended to bring it more under control. MR. MAINE had considered these last suggestions with all the attention and respect they deserved, but he had not been able to convince himself of their clear expediency. Whether they were expedient or not, they did not reconcile him, and he was sure they would not reconcile His Excellency the Viceroy, to the wholesale investiture of these judicial functionaries with Small Cause Court powers.

The High Court had done him the honour to quote a remark of his published in 1863, that—

"it is essential that the qualifications of the judicial officers appointed should be such as "to afford a guarantee for justice, equal or nearly equal to that which is now afforded by the "opportunity for correcting mistakes furnished by the power of appeal."

MR. MAINE adhered to that opinion, and still considered selection to be of the essence of the Small Cause Court system. There was, however, one objection of the High Court, to which MR. MAINE thought effect ought to be given. As the Bill stood, it enabled the Local Government to invest Subordinate Judges and Munsifs with a jurisdiction varying up to a certain fixed limit. The result would be that the Court might have to enquire, not simply into the fact whether a particular Subordinate Judge or Munsif had been invested with these powers, but, further, what was the limit of those powers. Every one conversant with the practice of Courts would say that such a provision would produce delay, and, perhaps facilitate chicane. MR. MAINE had been in communication with His Honour the Lieutenant Governor of Bengal, and found that His Honour agreed in this view, and that, in fact, even if the Bill remained as it was, His Honour would only invest persons with Small Cause Court powers up to the highest limit. The amendment now proposed would have the effect of substituting a fixed for a varying limit. MR. MAINE would only add that, if the Bill became law, His Excellency the Viceroy

would probably see fit to instruct the Lieutenant Governors administratively to make the local limits of the Small Cause jurisdiction of the Subordinate Judges co-extensive with the limits of the sadr stations.

The Hon'ble MR. MAINE then moved that, in section 20, lines 8 and 11, for the words "any amount not exceeding," the words "the amount of" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

BOMBAY BANK BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to appoint a Commission to enquire into the failure of the Bank of Bombay, said that the object of the Bill was to give effect to the instructions of the Secretary of State addressed to the Government of India, which instructions directed a formal enquiry into the causes of the unfortunate failure of the Bank of Bombay. The character of those instructions would be best conveyed to the Council by reading two paragraphs from the Secretary of State's despatch :—

"9. It now remains to enquire whether any, and, if any, what modifications are desirable in the relations between the Government and the Presidency Banks, and whether this opportunity should be taken to introduce them into the Charter of the new Bank of Bombay. I think it important that a full and searching inquiry should be instituted into the circumstances which led to, and which attneded, the recent catastrophe in the old Bank. In no other way, I think, can we fully learn the lessons which the experience of that catastrophe ought to teach us. It is important to ascertain whether the calamity which has befallen the Bank is due to the faults either of a system or of individuals, and whether measures can be devised for the prevention of similar misfortunes. It is unnecessary for me to enter at length upon all the questions which should be investigated, but among those which are the most obvious, I mention the following,—whether the presence of Government Directors at a Board upon which they are in a minority is a sufficient precaution against mismanagement, supposing them to do their duty, or whether further powers should be given to them; whether a system of Government audit or inspection is desirable; how Government Directors should be selected, and how they should be paid; whether it is desirable to disqualify for the office persons who are shareholders; whether any control should be exercised by the Government over the alteration of bye-laws;

how far the relations between the Financial Department of the Government and the Banks are satisfactory, and whether the responsibility of the Supreme and of the Presidency Governments respectively is rightly defined.

10. I request, therefore, that you will, in communication with the Government of Bombay, direct the issue of a Commission to inquire, without delay, into the circumstances attending the failure of the Bank of Bombay, with full powers to conduct the inquiry."

It was evident that the cardinal point of enquiry, that upon which all others hinged, was the question whether the collapse of the Bank was due to faults of system or faults of individuals. Such a question could not be answered by a Commission unless they had judicial powers to examine witnesses and call for books. The Bill was a Bill in the ordinary form, conferring such powers on the Commission.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill. He said that it empowered the Governor General to appoint Commissioners, and in case any seat on the Commission should become vacant, to fill it up. The Commissioners would sit with open or closed doors as they thought proper. They would be empowered to compel the attendance of witnesses and to examine such witnesses upon oath. They would call for all such books, papers and writings as they thought proper. Witnesses refusing to attend or answer would be treated as if the refusal had been given to a principal Court of original civil jurisdiction, and witnesses answering falsely would be punishable for perjury. The reasonable expenses of witnesses would be paid. No witness would be excused from answering on the ground of privilege or on the ground that the answer would criminate himself. But an indemnity was given against the consequences of any answer. MR. MAINE had further to state that one member of the Commission would be appointed from home, one by the Government of India, and one by that of Bombay. There was reason to believe that the Commissioner sent from home would be a gentleman long resident in this city and much respected here—Sir Charles Jackson, formerly a Judge of the Supreme Court and afterwards of the High Court. MR. MAINE would introduce the Bill and move that it be referred to a Select Committee with instructions to report in

three weeks, which was probably a sufficient time for communicating with the Government of Bombay.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to appoint a Commission to enquire into the failure of the Bank of Bombay—The Hon'ble Messrs Strachey and Cockerell, the Hon'ble Sir R. Temple and the mover.

The Council then adjourned till the 30th May 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 24th April 1868.

Office Supdt. Govt. Printing—No. 517 L C—27 4-68—180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla, on Wednesday, the 13th May 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.
The Hon'ble F. R. Cockerell.

There not being a quorum, the Council adjourned till the 20th May 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 13*th May* 1868.

Office Superdt Govt Printing —No 4259 L. C.—1-6-68.—190.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla, on Wednesday, the 20th May 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. S. Maine.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.

BOMBAY BANK BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to appoint a Commission to enquire into the failure of the Bank of Bombay, and requested His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Report be taken into consideration. He said that the Bill would have become law at Calcutta but for the necessity of previously communicating with the Secretary of State for India and the Local Government of Bombay. Those communications had now been received and acted upon. As, in the opinion of the Local Government, the Bank would ultimately pay its debts, and have some surplus, the recital in the Preamble had been correspondingly modified. The Government of Bombay had further suggested that the Commission should be allowed to act even though its members were reduced to two, but there were inconveniences in a Commission so constituted; power however had been expressly given to the Governor General of India in Council from time to time to add to the persons named in the Commission, and to replace members disabled from acting. Section 3 would require some further change to meet the views of the Secretary of State. The enquiry would begin at Bombay, but provision would be made for continuing the enquiry, if the Government of India should

think fit, at places in the province other than the Presidency town. In Section 4 the Committee had, at the suggestion of the Secretary of State, empowered the Commissioners to compel the personal attendance of witnesses residing not merely within the Presidency of Bombay, but in any part of British India. The alternative course of examining such witnesses by commission might still be followed by the Commissioners, and here the Bombay Government had recommended that this power of delegated examination should be limited to Judges and Collectors. The Select Committee, agreeing in the view of the Bombay Government, had at the same time thought that the matter was one fairly left to the discretion of the Commissioners who might be trusted to select proper persons to take evidence in their name. The most important amendment was the introduction of Section 9. The Bombay Government had suggested that provision should be made for pursuing the enquiry in England and elsewhere, and had urged that without this, it could never be complete. It was obviously not easy to comply with this request, for of course the Council of the Governor General had no power to bind directly persons residing in England. But Sections 177 and 178 of the Code of Civil Procedure authorized the High Court to issue Commissions for the examination of witnesses resident beyond the limits of British India, and the Statute 22 Vic., cap. 20, afforded facilities for taking evidence in one part of Her Majesty's dominions in relation to proceedings pending before Courts in another part of those dominions. It had accordingly occurred to the Committee that the difficulty might be met by declaring the Commissioners to be a Court for the purpose issuing commissions to take evidence beyond British India. The clause inserted was as follows:—

Commission to examine witnesses beyond the limits of British India.

9. The Commissioners may, whenever they think fit, issue a commission for the examination of witnesses resident beyond the limits of British India, and shall, for the purpose of issuing such commissions, be deemed to be a Court authorized to issue commissions by Sections 177, 178 and 179 of the Code of Civil Procedure.

Section 179 of the Code of Civil Procedure contained provisions as to the return of the commission to the Court issuing it together with the depositions. The English Courts would, he hoped, consider themselves justified in aiding the commission, if necessary. Section 11 was new, and provided not only for the punishment of perjury before the Commissioners, but also for that of the fabrication of false evidence and committing contempts. In Section 12, the Committee had, at the desire of the Secretary of State, struck out the provision that no statement made by a witness should be admissible against him in a civil proceeding, and had expressly provided that nothing in the proposed Act

should exempt him from a civil suit. The clause in the Bill as introduced was certainly in the usual form. Such clauses of indemnity were not however inserted on any principle which required that a person should be absolved from civil liability because the evidence of such liability consisted in an admission compulsorily extorted from himself. Since legislative changes in England and India which allowed the interrogation and examination of defendants, such a doctrine could not be maintained. Indemnity clauses were simply intended to induce persons aware of facts relevant to the enquiry to come freely forward and to answer freely, and the simple question was whether it was worth while holding forth such an inducement in the present case. MR. MAINE on the whole agreed with the Secretary of State that it was not. Criminal liability rested on a different footing, and the witness answering honestly would still be relieved from penal consequences.

In Section 13 the bar of suits against the Commissioners for anything done in the execution of the Act had been rendered absolute.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that in lieu of the first clause of Section 3, the following should be substituted :—

Commencement of enquiry.

3. The Commissioners shall enter upon the said enquiry in the town of Bombay on the first day of June 1868, or as soon after that day as they can conveniently do so, and such enquiry may be continued in the Presidency town or at such other place within the territories under the Government of the Governor of Bombay in Council as the Governor General of India in Council shall from time to time appoint.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned till the 27th May 1868.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Department (Legislative).

SIMLA,
The 20th May 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Simla on Wednesday, the 27th May 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.

INDIAN DIVORCE BILL.

The Hon'ble MR. MAINE moved that the Hon'ble J. Strachey, the Hon'ble Sir R. Temple, and the Hon'ble F. R. Cockerell be added to the Select Committee on the Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY moved that the Hon'ble F. R. Cockerell be added to the Committee on the Bill to consolidate and amend the law relating to rent in Oudh.

The Motion was put and agreed to.

OUDH TALUQDARS' BILL.

The Hon'ble MR. STRACHEY also moved that the Hon'ble F. R. Cockerell be added to the Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh and to regulate the succession thereto.

The Motion was put and agreed to.

The Council then adjourned till the 3rd June 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 27*th May* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Wednesday, the 3rd June 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble F. R. Cockerell.

The Council adjourned till the 10th June 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 3*rd June* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Simla on Wednesday, the 10th June 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. N. Taylor.

The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble Rájá Shioraj Singh, C.S.I.

The Council adjourned till the 17th June 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 10th *June* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 17th June 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. N. Taylor.

The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Council adjourned till the 24th June 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 17*th June* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 24th June 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. N. Taylor.

The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble MR. STRACHEY presented the further Report of the Select Committee on the Bill to consolidate and amend the law relating to rent in Oudh.

The Council adjourned till the 1st July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 24th June 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla, on Wednesday, the 1st July 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.

INOCULATION (KUMAON AND GARHWAL) BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to prohibit the practice of inoculation in Kumaon and Garhwal, said that the Bill had been prepared at the request of the Local Government, and that his reasons for asking for leave to introduce it might be stated in a very few words. About fifteen years ago,—he could speak from personal knowledge, as he then held appointments in Kumaon and Garhwal—he believed that no part of India suffered more severely from small-pox. In fact he had never heard of epidemics of cholera or plague more fatal. There were, however, on account of the coolness of the climate, great facilities for introducing vaccination, and the Government was fortunate enough to secure the services of an able and zealous officer, Dr. F. Pearson. The result was that, for some time, small-pox had almost ceased to exist in those territories. The means of vaccination were ample for all and easily available, and the majority of the people were beginning to be sensible of its power. For some years past inoculation had been prohibited in Kumaon and Garhwal, and it was supposed that such prohibition was not inconsistent with the law. The local authorities, however, had lately come to the conclusion that, to continue this prohibition, or at all events to enforce the sanction necessary to compel its observance, was distinctly illegal, and hence the correspondence which had resulted in the preparation of the Bill which he now asked leave to introduce. The Local Government wrote that "since the issue of

orders directing officers in the Division of Kumaon and Garhwal to refrain from prosecuting criminally persons infringing the proclamation by which the practice of inoculation was prohibited, some evil-disposed, ignorant or interested persons, now made aware that inoculation is not penal, have attempted to re-introduce it." Another reason urged by the Superintendent General of Vaccination for the adoption of some legislative measure was, that Kumaon and Garhwal were the seed-beds from which the North-Western Provinces and other parts of India were supplied with vaccine virus, and that it was therefore urgently necessary to keep the field untainted, and exclude the possibility of the virus being injured by the admixture of small-pox.

The Motion was put and agreed to.

NON-REGISTRATION OF SETTLEMENT RECORDS BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to exempt from the Indian Registration Act, 1866, certain instruments executed by or in favour of Government, said that the Bill had reference chiefly to documents connected with the settlement of the land revenue. It was generally held to be a doubtful question whether the settlement records were or were not liable to be registered under the provisions of the Indian Registration Act. Whilst, on the one hand, it was argued that these papers constituted simply the record of pre-existing rights, that they were not framed with the intention of *creating* interests in land, and could in no sense be regarded as documents of title; on the other, it was to be observed that the conditions of compulsory registration, as set forth in the Act, were very comprehensive, including not merely instruments which purported to create or transfer, but also those which tended in any way to limit or assign, any interest in land; and it was difficult to avoid the conclusion that the settlement records which treated of the rights of occupancy possessed by the tenant, the specification of his holding, and the adjustment of questions of disputed boundary, must be held to have the effect of limiting and defining, to some extent at least, interests in the land to which they related.

The subject had been brought under consideration in a reference from the Government of the North-Western Provinces, where extensive revisions of settlement were now being made. It had been urged that it was highly inexpedient that settlement records should be subjected to the obligations imposed by the Indian Registration Act; that, looking to the nature of the settlement record, the way in which it was prepared, and the manner in which it was kept and made accessible for inspection by all parties interested in its contents,

all the purposes of registration, as regarded the interests in land affected by it, must be held to be sufficiently attained; whilst the hardship and expense to individuals, of the fulfilment of the conditions of the Act by the further registration of such documents as therein required, was necessarily very great.

Upon this representation of the Government of the North-Western Provinces, a general reference was made to all Local Governments and Administrations—1*st*, as to whether such documents did come under the liabilities imposed by the Registration Act: 2*nd*, whether their registration under that Act was necessary or desirable.

On the first point, the replies received indicated the existence of some diversity of opinion and interpretation of the requirements of the Act; whilst as to the inexpediency of the registration of such documents being made compulsory, there might be said to be a general agreement. In these circumstances, it seemed necessary to have recourse to legislation, in order that the existing doubts as to the liability of this important and extensive class of documents to registration might be removed; and having regard to the weight of opinion against the subjection of such documents to the provisions of the Registration Act, it was clearly expedient to secure their exemption from its operation.

The Registration Act had for its chief objects the prevention of fraudulent dealings in regard to the conveyance of immoveable property, and the provision of a complete record of all titles and interests in land: the only substantial objection, therefore, that could be taken to the proposed exclusion of settlement records from the obligation which it imposed on the executants of deeds treating of such interests, was that, by their exemption, the registration record quoad the land which formed the subject of settlement would, to a certain extent, be incomplete.

The answer to this objection was, that what the registration records failed to supply would be found in the settlement records; that the latter afforded as good security for the authenticity of the facts which they represented as the former, and were no less accessible to the person interested in the investigation of their contents. The only disadvantage that such person was placed under through the non-liability to registration of these documents was, that he must search the records of two offices, instead of one, to obtain the complete information which he required. It had been suggested, however, that this difficulty might be overcome by providing for the deposit of copies of the exempted documents in the Registration Office. This was a question of detail which, if he

(MR. COCKERELL) obtained leave to introduce the Bill, could be more fully considered after the Bill had been referred to a Select Committee.

The Motion was put and agreed to.

NEILGHERRY COMMISSIONER'S SMALL CAUSE JURISDICTION BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill for investing the Commissioner and the Assistant Commissioner of the Neilgherry Hills with the powers of a Judge of a Small Cause Court, said that this was almost a formal matter. The Bill was necessitated by a defect of legislative power in the Council of the Governor of Fort St. George. It appeared that the Madras Government had been for some time engaged in framing a scheme for the administration of civil and criminal justice, and for the collection and superintendence of the revenues on the Neilgherry Hills. It had been found that, under the system now in force, the work devolving on the Civil and Sessions Judge of Ootacamund was sufficient to occupy only a portion of his time, and that, on the other hand, the Collector of Coimbatore had more business connected with the Neilgherries than he could efficiently discharge without withdrawing his attention from the rest of his district. The plan proposed by the Madras Government, which was somewhat of a Non-Regulation arrangement, had been sanctioned by the Governor General in Council; but part of the scheme consisted in investing the Commissioner and his Assistant with Small Cause jurisdiction. The Bill to attain this object could only be passed by the Council of the Governor General, as it would modify their Act No. XI of 1865, in so far as that Act contemplated that a Judge invested with Small Cause jurisdiction should be a Small Cause Judge and nothing else. This Council had to some extent departed from the principle which he had mentioned, by authorizing, under Act No. XVI of 1868, the Local Governments of Lower Bengal and the North-Western Provinces to invest subordinate Judges and Munsifs with the powers of a Small Cause Judge. This, of course, it was competent for the Council of the Governor General to do, but under the Indian Councils' Act, the local Councils had no power to amend any Act of the Governor General in Council made after the year 1861. Hence it had become necessary to supplement the Madras legislation.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be referred to a Select Committee, with instructions to report in a week. The matter was urgent, as the proposed measure formed an essential part of the larger scheme to which he had adverted, and many pressing telegrams on the subject had been received from Madras by his Hon'ble friend, Mr. Taylor. The Bill first provided for the investment of both the Commissioner and Assistant Commissioner of the Neilgherry Hills with Small Cause jurisdiction. The Local Government intended that one or other of these officers should be invariably present at Ootacamund for the trial of Small Causes, which formed the principal part of the judicial work on those Hills. The Bill also provided for the Commissioner and the Assistant Commissioner exercising the powers of a Court of Small Causes jointly as well as singly, and that, in the exercise of these powers, they should be subject to such rules as the Local Government should prescribe. The Commissioner would have a casting voice in cases where he differed from the Assistant Commissioner.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Judge of a Small Cause Court—The Hon'ble Messrs. Taylor and Cockerell and the Mover.

The Council adjourned till the 8th July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 1st July 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 8th July 1868.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.

NEILGHERRY COMMISSIONER'S SMALL CAUSE JURISDICTION BILL.

The Hon'ble Mr. MAINE presented the Report of the Select Committee on the Bill for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Court of Small Causes.

The Council adjourned till the 15th July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 8th July 1868.

Office of Supdt. Govt. Printing.—No. 5286 L. C.—18-7-68.—160.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 15th July 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

NEILGHERRY COMMISSIONER'S SMALL CAUSE JURISDICTION BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Court of Small Causes, be taken into consideration. He said that it was unnecessary to add anything to the explanation given when he had introduced the Bill. It was a mere supplement to the Madras Act for appointing a Commissioner to administer civil and criminal justice on the Neilgherry Hills, and was necessitated by the Local Council's want of legislative power.

The Motion was put and agreed to.

The Hon'ble Mr. Maine moved that in the preamble, the number of the Madras Act there mentioned should be changed from "II" to "I." The change had been suggested by a telegram recently received from Madras.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INOCULATION (KUMAON AND GARHWAL) BILL.

The Hon'ble Mr. Strachey introduced the Bill to prohibit the practice of inoculation in Kumaon and Garhwál, and moved that it be referred to a Select Committee, with instructions to report in one month. He said that when he moved for leave to introduce the Bill, he had sufficiently explained its object. The Bill had been prepared at the request of the Local Government. Its most important section was taken from the English statute 3 and 4 Vic., C. 29 *(An Act to extend the practice of vaccination)*.

The Motion was put and agreed to.

NON-REGISTRATION OF SETTLEMENT RECORDS BILL.

The Hon'ble Mr. Cockerell introduced the Bill to exempt certain Instruments from the Indian Registration Act, 1866, and moved that it be referred to a Select Committee, with instructions to report in one month. He said that the first and third clauses of the schedule related to documents connected with the settlement of the land revenue, the object and grounds of exemption of which were explained when leave was asked for the introduction of the Bill. The proposed exemption of survey records provided for in the second clause was governed by precisely similar considerations. In regard to the sanads covered by the fourth clause, the case was somewhat different. Whilst on the one hand, it might be said that the object of registration was as fully attained, as in the case of settlement papers, by the record which was carefully prepared and preserved in the Collector's office, it must be admitted, on the other, that there was no valid plea for the remission of the obligation to register such instruments on the score of the trouble and expense which the procedure would entail on the individual grantee or holder of them.

The object of the proposed exemption of this class of documents was to rectify past omissions. It appeared that since the 1st January 1865, the date on which the Registration Act came into operation, upwards of 1,400 sanads or instruments of grant had issued in the North-Western Provinces, the holders of which, through ignorance of the requirements of the law, had neglected to register them. The time within which such registration could be legally effected had passed, their registration now was impracticable, and in default of registration, their legal validity, under section 49 of the Indian Registration Act, was liable to be called into question. It was at first proposed to get over the difficulty by granting fresh instruments in lieu of the unregistered sanads; the objections raised to that course were, 1st, that the measure would entail considerable expense on the Government, and, 2nd, that the necessary surrender by the grantees of their original instruments would be likely to excite doubts and fears in their minds as to the good

faith of the Government in the matter, for they would be slow to comprehend the necessity of any further legal formalities in connection with their grants. In those circumstances, the Government of the North-Western Provinces recommended recourse to legislation either in the form of exempting those documents from registration, or specially extending on their behalf the period of limitation prescribed by the Act. Advantage had accordingly been taken of the opportunity afforded by this Bill for including those sanads in the category of instruments exempted from compulsory registration. This ground of exemption however applied simply to sanads issued since the Registration Act came into operation, the proper period for the registration of which had lapsed. But he thought that there were no less cogent reasons for making the exemption applicable to documents of this class that might be issued hereafter, equally with those which had been heretofore granted. He held that such grants, made by the Government as a reward for special service, stood on a very different footing from ordinary conveyances, and that it was politically inexpedient that the law should admit of any question of the validity of such documents, owing to the non-observance by the grantees of the form of obtaining their registration. The maintenance of the obligation to register those instruments was calculated to weaken their prestige in the minds of the grantees, and as such registration was, as regards the main object and purpose of the Registration Act, unnecessary, it might not unreasonably be dispensed with.

Provision had been made in section 1 for determining the effect of exemption as regards the value to be attached by the Courts to the exempted documents, when put in evidence, and for giving retrospective effect to the privileged tus conferred by the Bill.

The Motion was put and agreed to.

TENANCY OF LAND (PANJAB) BILL.

The Hon'ble Sir R. TEMPLE presented the preliminary report of the ect Committee on the Bill to define and amend the law relating to the ancy of land in the Punjáb. He said it was only necessary to state that, h the general consent of the Council, the Bill would be referred to the utenant Governor of the Punjáb, with a request that he would obtain the nions thereon of the Judges of the Chief Court and of such local officers as might think fit to consult.

The following Select Committees were named :—

On the Bill to prohibit the practice of inoculation in Kumaon and Garhwál he Hon'ble Messrs. Maine, Cockerell and the mover.

On the Bill to exempt certain Instruments from the Indian Registration Act, 1866—the Hon'ble Messrs. Maine, Strachey and the mover.

The Council adjourned till the 22nd July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 15*th July* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 22nd July 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

COORG COURTS' JURISDICTION BILL.

The Hon'ble MR. TAYLOR, in moving for leave to introduce a Bill to define the jurisdiction of the Courts in Coorg, said that the Bill as framed by Mr. Saunders, when Judicial Commissioner of Coorg, would embody the details requisite to ensure the efficient working of the courts of that province, and be modelled on the Acts recently passed for the administration of civil and criminal justice in the Panjáb and other Non-Regulation Provinces.

The Council were doubtless aware that the small mountainous province of Coorg, probably not larger than an ordinary District elsewhere, was situated in the south-western corner of Mysore, and was administered by the Commissioner of that territory. It was annexed by the British Government more than thirty years ago in consequence of the hostility and rebellious conduct of its Rájá, our tributary; and, what was perhaps more remarkable, at the express desire of the people of the country who were thoroughly harrowed and worn out by the savage and revolting cruelties which had been perpetrated by their own native rulers for a series of years. The people were a hardy warlike race, and were described as retaining to the present day much of the primitive simplicity, as well as the independence, of their character. Our administration had not failed to give satisfaction, and the courts of judicature established since our

assumption of the country had been well suited to the wants and habits of the people. But a great change had passed over the province of recent years. Owing to the extension of coffee-planting, to which the soil and climate of South Coorg were peculiarly adapted, and to the influx of Europeans connected with that growing industry, civilization had progressed, commerce extended, and the work of administration had consequently increased. Until quite recently, the Superintendent was the only European executive and magisterial officer in the province, and his court was held forty miles from the tract chiefly occupied by the English planters. The want of an Assistant Magistrate and executive officer, who could communicate with the settlers by word and letter in their own language, soon began to be keenly felt. On the urgent representation of the Planters' Association, the Commissioner thoroughly advocated the appointment; and the Government of India had recently allowed an European Assistant to be posted to South Coorg. A question, however, at once arose as to his duties: it was asked by the local authorities if he should try all cases in which Europeans were concerned all over the Province; and it was proposed that, for this purpose, he should have concurrent jurisdiction with all local courts in all civil cases up to Rs. 3,000. The object was to allow all Europeans to bring their cases to his court in preference to the ordinary courts of the country if so inclined. It was then pointed out that this could only be done by a legislative enactment, as in the case of other Non-Regulation Provinces in respect to which it had been found necessary to pass laws to confer civil and criminal jurisdiction not hitherto exercised. It seemed desirable, therefore, instead of confining the measure to the single object of providing a jurisdiction for the court of the European Assistant, which could not have been easily fitted to the existing system, to take the opportunity of remodelling the whole judicial machinery of the Province and placing it on a proper legal basis.

The Commissioner was accordingly desired to prepare and submit a Draft Bill, defining the constitution and jurisdiction of the various courts he proposed to retain, and the kind of procedure he would lay down for them. This he had now done. Several grades of courts of both civil and criminal jurisdiction were proposed on the model of those in the Panjáb and Central Provinces, though under different local names; retaining as far as possible the present system and the simple rules of procedure now in force. He (MR. TAYLOR) would not detain the Council by going over the several provisions of the measure; but with the above explanation of its object, he would ask His Excellency's permission to introduce the Bill.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble Mr. Strachey moved that the further report of the Select Committee on the Bill to consolidate and amend the law relating to rent in Oudh be taken into consideration. When the Bill was introduced, he stated that there were two objects for which legislation was necessary; first, to give the force of law to the engagements entered into by the Government, and to confirm the concessions made by the taluqdárs of Oudh in favour of certain classes of tenants; and second, to provide for many matters relating to the recovery of rent, in respect of which the existing law was either doubtful or unsatisfactory.

Since the Bill was last discussed in Council, it had been twice referred to a Select Committee, and all its provisions had been carefully scrutinized. The opinions of all the principal revenue officers in Oudh, and of many officers in other provinces, had been given, and every section of the Bill had been discussed by him personally with the present Chief Commissioner and Financial Commissioner, and with the chief taluqdárs. He believed that no Bill had yet come before this Council which had been more thoroughly examined and criticized.

So far as the Bill referred to the engagements entered into between the Government and the taluqdárs, it was stated in the report of the Select Committee, dated the 15th September last, that the taluqdárs were completely satisfied with the provisions of the Bill. They had repeatedly declared that the Bill carried out faithfully all the engagements of the Government, and they themselves confirmed to His Excellency in person the accuracy of this statement when His Excellency visited Lucknow in November last.

In respect, therefore, of those portions of the Bill which referred to those particular questions, nothing more need be said, for no changes of importance had been subsequently made in them.

One addition, indeed, had been made to section 5, with the object of negativing more distinctly the transferability *inter vivos* of rights of occupancy. This had been done merely to make the intention of the section clearer. It was never proposed that those rights of occupancy should be transferable without the consent of the landlord. With such consent, they would be transferable, if the conditions of the last proviso to section 5 were complied with.

When he introduced this Bill, he said that, except the rights of occupancy declared to be possessed by the class of cultivators who had once possessed

proprietary rights in the land which they now held, no rights of occupancy were recognized by this Bill, and he added that no rights of occupancy could hereafter be created by the Government, or could grow up in Oudh, as they could grow up in provinces where Act No. X of 1859 was in force, from the mere occupation of the land for twelve years, or for any other time. So far as the Government was concerned, the only class of tenants with rights of occupancy was the class described in section 5 of this Bill. If any other rights of occupancy were claimed, they could only be established by the decree of a competent Court of law, and such claims would not be affected by this Bill. If any tenant claimed to possess a right of occupancy different in kind to the rights of occupancy therein described, it was of course open to him to sue for that right in a Court of law, and to prove his claim if he could. If such rights should in any case be established, they must be protected by the Courts, in accordance with those orders of Lord Canning which formed the legal basis of all existing rights in land in Oudh, and which declared that all persons "would be secured in the possession of the subordinate rights which they had heretofore enjoyed." He had thought it desirable to mention this, although he did not suppose that the matter was one regarding which there was likely to be any doubt. He might add that what he had now said was in strict accordance with the views of Sir Charles Wingfield. He had repeatedly stated in the official correspondence which had been published, that, although he considered that non-proprietary tenants must be assumed to be tenants-at-will until the contrary was proved, he had never desired to shut against any one the judicial tribunals by which claims to rights in land were heard and determined.

He would have to propose some verbal amendments in two of the sections which referred to the right of tenants to claim compensation, under certain circumstances, for unexhausted improvements. No change of importance, however, was proposed in the original provisions of the Bill in regard to this matter. There was no part of the Bill which he believed to be more important than this, or which he looked upon with greater satisfaction. This was, he believed, the first attempt that had been made in India—he was very sure that it would not be the last—to legislate on this subject, regarding which there had lately been so much discussion at home.

The time had, he hoped, almost passed away in which it was necessary to argue in favour of the principle that property created by the industry of a tenant ought to belong to him, and that it ought not to be liable to confiscation at the pleasure of a landlord. The justice of this principle was the more evident in a country like India, where for the most part, whatever improvements were

made were commonly made by the tenants and not by the landlords. That being the case, it was right to assume, as this Bill assumed, that in the absence of any specific agreement to the contrary, improvements made by a tenant had been made with the tacit consent of the landlord.

The necessity for legislation on this subject had lately received a strong illustration.

When he introduced this Bill, he believed that, although in the present state of the law, it was, to say the least, very doubtful whether a tenant could in any case obtain compensation for improvements which he had made without his landlord's consent, it did not occur to him (MR. STRACHEY) to imagine that the tenant, by making such improvements, even of the most trivial description, exposed himself not only to the chance of losing the money that he had expended, but to the danger of being summarily ejected altogether from his holding. Yet this had lately been declared by a Full Bench of the High Court at Agra to be the existing law in the North-Western Provinces, and if it were the law there, it might perhaps be supposed that it was the law in Oudh also. He asked the attention of His Excellency and of the Council to that judgment of the High Court which he held in his hand. It was dated the 20th July 1867, and it had recently been published for the information of revenue officers by the Board of Revenue in the North-Western Provinces. This judgment laid down the general rule that a tenant, even though he possessed a right of occupancy, made himself liable to ejectment if he dug a kachchá well without the previous consent of his landlord, although it was admitted that there might be local usages forming exceptions to the general law.

He did not wish to say much on this subject, for he thought that the bare statement of those facts was sufficient for his present purpose. But the matter was one of very great importance. The right of occupancy possessed by an hereditary tenant was, as his hon'ble friend Mr. Maine had clearly shown, a right of property in the land. Such a tenant was in fact a part-proprietor. Whether this sort of property were economically good or bad,—he himself believed it to be good,—had nothing to do with the present question. Not only did that right of property unquestionably exist, but the right was often a very valuable one. That such a right, or for that matter, any other right should be capable of annihilation by the digging of a kachchá well seemed to him to be truly extraordinary.

For what was a kachchá well? It was really a misapplication of terms to call it a well, or it would be so, if they had in English any other word by which

it could be described. A kachchá well, in the greater part of Northern India, was a mere hole dug in the ground to the depth of a few feet, and perhaps 3 or 4 feet in diameter, and it cost usually a few shillings to make. The digging of those holes for the supply of water for irrigation was very commonly, as the Board of Revenue had truly said, as essential as the ploughing of the land to the production of any crop at all.

Yet the digging of such holes, without which no crop could be raised, exposed a man, unless he had got the consent of the superior owner of the land, to the confiscation of the property which he and his ancestors had perhaps held for centuries! If they were to be told that in those parts of Ireland in which the Ulster custom of tenant-right prevailed, and in which tenants often invested large sums of money in the improvement of their farms, it had now been found to be the law that such a tenant might be summarily ejected, and his property confiscated, if he manured his crops, or removed the weeds from his corn-fields, they might say, without any exaggeration of the fact, that such a law was less extraordinary and less unreasonable than that law which had been declared to be the law of the North-Western Provinces of India.

He would not for a moment call in question the accuracy of the conclusion as to the state of the existing law which the High Court had thus declared, and he might add, in justice to the Court, that the Judges had shown most clearly by the terms in which their judgment was worded, that they felt strongly the injustice and the inexpediency of the law which they held themselves bound to administer. While he was glad to know that after the passing of this Bill, there would be no danger of any such law being applied in Oudh, he thought that the facts which he had now noticed demanded the serious attention of the Government.

An important change had been made in that part of the Bill which related to the enhancement of the rent of tenants not having rights of occupancy. The original Bill following the practice hitherto in force in Oudh and in those Provinces to which Act No. X of 1859 was applicable, provided that when (with certain exceptions) a landlord desired to enhance the rent of a tenant, he must, before a certain date, serve a notice upon him through the tahsíldár, specifying the rent demanded and the fields in respect of which enhancement was to take place. Although the intention of these provisions was the protection of the tenant, it had been found that their actual effect had been of a very different character. They had placed in the hands of the landlord a power of enhancing rents which he would not otherwise have exercised, and the tenant often looked on the

notice served through the tahsíldár as an order of the Court that he was to pay the increased rent which had been demanded by the landlord. This procedure had been objected to on other grounds also. It often led to unnecessary and objectionable interference by the Courts between landlord and tenant in cases in which, if left to themselves, they would settle by mutual agreement the terms upon which the land was to be held. The Select Committee, in accordance with the almost unanimous opinion of the officers who were consulted, came to the conclusion that this custom of issuing notices of enhancement of rent through the tahsíldár ought to be done away with. All that was really necessary was that, when a dispute arose regarding the amount of rent to be paid by a tenant to a landlord, the Court should be able to ascertain without difficulty the terms which were actually agreed upon between the parties. Section 36 of the amended Bill provided for this difficulty. If in any suit between a landlord and a tenant not having a right of occupancy, the amount of rent payable by the tenant were disputed, the Court would assume that the tenant was liable to pay rent at the same rate which was payable for the last preceding year, unless it were shown by evidence in writing that the parties had agreed that the previous rent should be altered. This was almost equivalent to saying that an enhancement of rent must always take place under a written lease. If no arrangement could be come to between the parties, the landlord would have the remedy in his own hands by exercising his power of ejectment. A strong encouragement would thus be given to the adoption of the highly beneficial custom of giving written leases for a term of years. He (MR. STRACHEY) believed that while this change in the law would be advantageous to tenants, it would be entirely approved by the better class of landlords.

Since the Bill was introduced, an important change had been made in Chapter VI, which related to distress for arrears of rent. The result of the original proposals would have been a lawsuit in every case in which the landlord exercised the power of distraint, and the expense of this litigation could have fallen, almost invariably, on the tenant. The Bill, as it now stood, followed in regard to distress for arrears of rent, in all essential respects, the procedure of Act No. X of 1859.

A proviso had been added to section 109, to the effect that in the notification by which the Code of Civil Procedure was extended to Oudh, the words "ancestral property" should be held to include the property in land of persons admitted to engagement for the land-revenue at the Summary Settlement of 1858-59. This required explanation. For political and other reasons, the Government determined that ancestral property in land should not be sold in satisfaction of decrees of Court without the sanction of the Judicial Commissioner.

In cases coming under the present Bill, the sanction of the Financial Commissioner would be necessary. But according to the orders of Lord Canning under which the sanads of the taluqdárs were granted, the property in land of an Oudh taluqdár, as he (MR. STRACHEY) explained when he introduced the Bill to define the rights of taluqdárs, was not, legally speaking, ancestral. That property depended entirely upon the gift of the British Government, and not upon any hereditary rights. Consequently, if the proviso that now added to the Bill had been omitted, the land of a taluqdár might have been sold in satisfaction of decree of a Revenue Court without the sanction of any superior authority, and thus the desire of the Government to prevent property of this description passing into the hands of strangers would have been frustrated. This defect in the law would continue to exist after the passing of this Bill in respect of the decrees of the Civil Courts.

A change had been made in section 125 which required notice. As the Bill originally stood, there was no doubt that sufficient means were not given to taluqdárs for the speedy recovery of arrears due by under-proprietors holding sub-settlements. In such cases, there could be no exercise of the power of distraint, and the taluqdár who, under the system in force in Oudh, was directly responsible for the punctual payment of the Government revenue would not always have had, under the Bill as it was formerly drawn, sufficient means of recovering from under-proprietors the arrears, on the receipt of which his power of paying that revenue might depend. The only means that he could take was the institution of suits in Court. Theoretically, the taluqdár had been protected against ultimate loss by the liability of the under-proprietor to have his tenure sold in execution of decree, but, as he had before said, there were such great difficulties in the way of thus bringing landed property to sale, that this security was really not worth much. In the interest of the Government and of the under-proprietors themselves, some further provisions were quite as necessary as they were in the interest of the taluqdár. It must be remembered that a large portion of the taluqdár's demand on the under-proprietor holding a sub-settlement consisted, in fact, of the revenue that was due to the Government, and the amount of this demand on the under-proprietor did not depend on any voluntary agreement between him and the taluqdár, but was determined by a judicial decree. The Government was therefore interested, as well as the taluqdár, in the payment of the sums due under a sub-settlement by an under-proprietor. Under these sub-settlements in Oudh, a heavier burden was ordinarily placed on the land than would be the case if the revenue were paid directly to the Government instead of to the taluqdár. Special rules had long been found necessary in the case of village communities and of proprietors dealing

directly with the Government, to save them from ruin when they failed to meet the Government demand. Timely study of the causes of default was necessary, and if it was objectionable to leave such cases to the mechanical procedure of the Courts, it was not less objectionable to leave unprotected the interests of under-proprietors holding sub-settlements under taluqdárs. In the latter cases also, it was right that the causes of default should be discovered and appropriate remedies applied. The so-called rent that was paid by an under-proprietor holding a sub-settlement, differed in its nature from the rent ordinarily paid to a landlord. It was in fact, in a great measure, revenue payable to the Government, and it seemed right that it should, when necessary, be recovered as such. In this manner, while effect was given to the judicial decree of the Settlement Court, and the rights of the taluqdárs were upheld, the under-proprietor would at the same time be protected against the danger of unjust treatment on the part of the taluqdár. The Bill as it now stood gave to the Deputy Commissioner power to exercise, for the satisfaction of a decree against an under-proprietor, all the powers which he might have exercised for the recovery of an arrear of revenue.

He did not think that he need refer in detail to any of the other changes in the Bill which had been noticed in the report of the Select Committee. Many of these were of little importance, and the rest had been explained sufficiently in the report.

He had said nothing to-day regarding those questions of tenures and of the rights of landlords and tenants which had been the subject of so much discussion. When the present Bill and the Bill to define the rights of taluqdárs in Oudh were introduced, he gave his opinion fully upon all these matters, and he thought that no useful purpose would be gained by going into them again. The merits of the policy which had been followed by His Excellency in Oudh had been, as every one knew, keenly criticized. Few Indian questions had created so much interest as these questions connected with the Province of Oudh created in their day. Experience would infallibly show hereafter whether in its main principles the policy of His Excellency was right or wrong. Having had in his hands for two years the administration of Oudh, he (MR. STRACHEY) had had as good opportunities as most men of forming an opinion on these matters. He contented himself now with repeating what he had often said before, that he believed the policy followed by His Excellency in Oudh to have been just and necessary, and in complete accordance with the real intentions of Lord Canning, and he was glad to know that he had borne a part in carrying that policy into effect.

The Hon'ble MR. MAINE said that he had seen references to the judgment of the High Court of the North-Western Provinces on which his hon'ble friend had placed so much stress, but before the present moment, he had not had an opportunity of reading it. So far as he could judge from a cursory perusal, it seemed to correspond with the description of it given by Mr. Strachey, and no doubt the Viceroy, after what had been said, would direct an enquiry to be made of the North-Western Provinces Government as to the probable effect of the decision on the status of the ryot. But he, MR. MAINE, was anxious to say that the High Court did not appear to be in the very least to blame for the law it had laid down. It avowedly based its decision partly on the general custom of the country as shown to it by evidence and authority, and partly on the wording of parts of Act X of 1859. But the Judges expressly justified their decision on the ground that they were interpreters of the law, and not legislators. He would read a passage from the judgment of the Full Bench, in which the Court indicated, as far as a Court could do so with propriety, that it doubted whether the law, which it was obliged to declare, was in accordance with good policy.

"There may, of course, be local usages forming exceptions to the general law; but we see no reason to doubt that the law is such as it is represented to us to be by the pleaders who appear for the plaintiff in this case. The law may or may not be opposed to good policy. The act of digging a well or planting a tree does not necessarily imply or assert a proprietary right in the land in which the well is dug or the tree planted. Whether it be most expedient that the tenant should be encouraged to improve his holding by all means, or that the benefits resulting from certain modes of improvement should be secured to the landlord or left to his option, may be a question, but it is one which we are not called upon to consider. The Court must recognize the law as it is found to exist, so long as it shall not be superseded by positive law, and must apply it in all cases not governed by local usages or special contract.

So also in respect of the penalty incurred by a tenant who is guilty of a breach of contract of the kind which this case brings to our notice, the unwritten law of the country must be our guide. Were we free to legislate upon the subject, it might seem to us equitable and expedient to look to the amount of injury actually caused to the landlord by the act complained of, and to grant him relief and compensation whenever possible, otherwise than by ejectment of the tenant. But it is not contended or proved that any other penalty than forfeiture of his holding for such a breach of contract is sanctioned by the law of these Provinces."

The case made strongly in favour of an opinion which he, MR. MAINE, held, and which, judging from many communications he received from learned Judges of the High Courts, he inferred that not a few of them held that, if common

justice was to be secured to the masses in India, it would never to do to trust exclusively to declarations of law by Courts however dignified, but the active interposition of the Legislature was indispensably necessary.

The Hon'ble Sir H. M. DURAND said that, in signifying his general assent to this Bill, he had to observe that some of its provisions involved principles that, under ordinary circumstances, would have been open to much discussion and conflict of opinion, and which would have demanded more sifting and limitation in application, than they had here met with. The Hon'ble Mr. Maine had touched upon one such radical point when noticing the decision of the High Court to which the Hon'ble Mr. Strachey adverted, and this was by no means the only point affecting the rights of the proprietor of land, or the landlord, that might be adduced. We had, however, during the progress of this Bill so repeatedly received the assurance that its every section had the concurrence, not only of the administrative authorities in Oudh, but also specially of the talúqdárs and landlords, that this legislative enactment came before us under peculiar circumstances. Under these circumstances, namely, the primary action of the Government in this matter, the liberal concessions of the taluqdárs to meet the views of Government, and the continual assurances given by the hon'ble mover that the consent of the taluqdárs was obtained, *pari passu*, to every provision and section admitted into the Bill so that the latter had their entire approval, he (SIR H. M. DURAND) signed the Report of the Committee. He must add that, though occasionally prevented by other duties from attending some of the sittings of the Committee, he was enabled, by the information given him by the Secretary, Mr. Whitley Stokes, not to lose, on such occasions, the chain of its proceedings. But, though he had followed with care and interest the consideration of the provisions of this Bill, he was bound to add that what has had great weight with him in accepting the Bill was, the information derived from one enjoying in a peculiar degree the confidence of the taluqdárs. He alluded to Sir George Yule, from whom he learnt that the taluqdárs, though they regarded the Bill as drafted in a spirit adverse to their rights, and containing provisions based on the theoretical views of a particular school, were nevertheless willing to accept the Bill, because they considered that, as a formal legislative enactment, it contained an acknowledgment of their rights, and was a solemn guarantee that would render any future invasion of those rights by succeeding Governments difficult, if not impossible.

The Hon'ble MR. COCKERELL wished to put to the hon'ble mover a question in regard to section 41. He would ask why the tenant holding

on an unexpired lease had been classed with the tenant who had distinct rights of occupancy, and was made liable to ejectment only under the operation of a decree granted for that specific object? It appeared to him that all tenants were properly divisible into two classes, namely, those who had rights of occupancy, and those who had not, and that the mere lease-holder, without any distinct right of occupancy, whether the term of his lease had or had not expired, must necessarily belong to the latter class. In the amended Panjáb Tenancy Bill, the holder of an unexpired lease was classed with tenants who had no right of occupancy, and made subject to provisions precisely similar to those of Clause 1, Section 42 of this Bill. It seemed to him that in that case, the class of tenant referred to was properly dealt with, and should be similarly treated in this enactment. In other words he held that the lease-holder against whom a decree of arrears of rent had been obtained, should be liable to be ousted at his landlord's pleasure in the execution of such decree. The lease was in the nature of a contract by which the holder thereof is bound to pay a certain rent; if his rent-payments fell into arrear, he had failed to perform his part of the contract, and, as in ordinary contracts, the default of either party rendered the contract voidable. He submitted that a lease became justly cancelled by the mere fact of the holder's failure to act up to its conditions. He saw no use in the provision of section 40, that a tenant whose rent was in arrear on a certain date, might be ejected, if such ejectment could only take place after a decree for that special purpose had been sought for and obtained independently of any decree establishing the fact of the arrears of rent.

The Hon'ble Mr. Strachey said that, if he rightly understood the question, he thought that the section required no alteration. If a tenant held under an unexpired lease, it was not proper that he should be liable to be ejected until the decree of a competent Court had declared that he was so liable in consequence of his failure to act up to the conditions of his contract.

His Excellency the President said that it was a subject of congratulation that this Bill, which he might describe as defining the rights of the tenants in Oudh and the principles on which those rights were founded, had now been brought to so satisfactory a conclusion. Considering the circumstances under which so many of the rights and privileges of the taluqdárs had arisen—considering that these rights had been gained at the expense of the old village landed proprietors, who were now often reduced to the condition of tenants with rights of scarcely appreciable value,—the Government of India were, in His Excellency's opinion, bound to mediate between the tenants as a body

and the taluqdárs. While he, THE PRESIDENT, admitted that in every case these claims of tenants had not received all the consideration they might have had, they had in fact obtained a great deal, and HIS EXCELLENCY entertained a hope, which he might say amounted to a conviction, that the result of the present measure would be beneficial to all classes, taluqdárs, sub-proprietors and tenants. He (THE PRESIDENT) had always felt a strong interest in the subject, and for many years he had taken a large part in all that had been done to settle the conflicting claims to which he had referred, not from any undue animus on his part against the taluqdárs, but because he thought the tenants were the weaker party, oppressed, and in former days despoiled by their landlords. All that he had done in the matter, HIS EXCELLENCY rejoiced at having done, and he was sanguine that the results anticipated by his hon'ble friend Mr. Strachey would be attained by the measure which the Council was about to pass.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that in lieu of sections 22 and 25, the following be substituted:—

Tenants' right to compensation for improvements.

"22. If any tenant, or the person from whom he has inherited, make any such improvements on the land in his occupation as are hereinafter mentioned, the rent payable by him or his representative shall not be enhanced, nor shall he or his representative be ejected from the same land unless and until he or his representative, as the case may be, has received compensation for the outlay, in money or labour, or both, expended in making such improvements, by him, or the person from whom he has inherited, or whom he represents, within thirty years next before the date of such enhancement or ejectment.

Provision for difference as to amount or value of compensation.

25. In case of difference as to the amount or value of the compensation tendered, either party may present an application to the Court, on a paper bearing a stamp of eight annas, stating the matter in dispute and requesting a determination thereof.

Notice of such application shall be served on the other party by the proper officer, and the applicant shall pay the costs of service.

On receiving such application, the Court shall, after taking such evidence as the parties or either of them may adduce, and after such further enquiry (if any) as it may deem necessary, determine (as the case may be) the amount of the payment or the terms of the lease or both.

In determining such amount, the Court shall take into account any assistance given by the landlord, either directly in money, material or labour at the time of making such improvements, or indirectly by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he otherwise would have held.

The proceedings on any such application shall be deemed to be a suit for the purposes of chapter six (as to reference to arbitration) of the Code of Civil Procedure and of section nine of Act No. XXIII of 1861 *(to amend Act VIII of* 1859*)*."

He said that the alterations now proposed were little more than verbal. But it had been pointed out that as section 22 now stood, a tenant might claim compensation for improvements on the mere demand by his landlord of an enhanced rent, or on the receipt of a notice of ejectment, although neither the enhancement nor the ejectment might have been actually carried into effect. This would have been clearly unfair to the landlord, and nothing of the sort had been intended when the Bill was prepared, nor by the Select Committee. Doubts had also arisen whether cases under section 25 could, under the Code of Civil Procedure, be referred to arbitration. There was clearly no class of cases in which recourse to arbitration could be more generally proper, and all doubt as to the legality of this course would be removed by the amendment which he now proposed.

The Hon'ble MR. COCKERELL said that before the hon'ble mover of the Bill proceeded to put his proposed amendment of section 25, he (MR. COCKERELL) would suggest for his consideration the propriety of making a slight alteration of its present purport. In Clause 2 of the proposed amendment, it was provided that "the applicant shall pay the costs of service" (of the notice therein referred to). It was elsewhere provided in the Bill that the rules prescribed by the Civil Procedure Code should be generally applicable to proceedings under this Bill. By section 2, Act XXIII of 1861 (which formed part of the Code of Civil Procedure), it was provided as follows :—

Every process required to be issued under Act VIII of 1859 shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court; and the sum required to pay the costs of such service shall be paid into the Court before the process is issued, within a period to be fixed by the Court issuing the process.

MR. COCKERELL submitted therefore that the insertion of the words above cited was not merely unnecessary, but was calculated to limit the application of the more comprehensive provisions of the existing law in this matter, and he would for this reason propose the omission of Clause 2, and the substitution therefor of the following words to be inserted after the word "shall" in the first line of the third Clause of the same section,—"cause notice thereof to be served on the other party, and"

The Hon'ble MR. STRACHEY expressed his willingness to adopt Mr. Cockerell's suggestion.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said that, with Mr. Strachey's approval, he had to propose a slight amendment of section 30. The subject of this section was to a certain extent *in pari materia* with that of section 25, but whereas in the case of the latter, provision had been made,—probably with regard to the difficulties known to have arisen in the determination of the proper stamp duty chargeable under the new Stamp Act on petitions and applications in suits and proceedings, the value of the subject-matter of which was undefined,—for imposing a moderate fixed stamp duty on the petition or application to be presented to the Court under that section, no such provision had been made in section 30. MR. COCKERELL moved therefore that the omission be supplied by inserting after the word "Court" in that section the following words:—"on a paper bearing a stamp of eight annas."

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY also moved that in section 31 the words 'one month' be substituted for 'three months.'

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed.

HIS EXCELLENCY the COMMANDER-IN-CHIEF begged to offer a few words of sincere and hearty congratulation to His Excellency the Viceroy and his hon'ble friend Mr. Strachey on the completion of this great labour. He (SIR W. MANSFIELD) had abstained from taking a part in the discussion which had led to the introduction of the Bill, and in the debates which had subsequently taken place, but he had been a careful observer of all that had occurred. He now ventured to bear his humble testimony to the admirable forbearance and moderation which had been exercised by His Excellency the Viceroy and other hon'ble members of the Council in dealing with the great questions submitted to them. Without the display of those qualities, this Bill, which was the solution of those questions, could not possibly have been carried.

When the vast importance of the interests concerned is considered, it was not too much to say that the passage of this law would be deemed hereafter a bright illustration of the history of the viceregal reign, and that it would throw into the shade feats of government and policy which the public at present might consider more brilliant.

For this measure was not merely the termination of a discussion which had spread over many years,—it was not merely a resting-place in the controversy between two rival schools of English thought in the administration of India, a controversy which would probably endure as long as the principles they represented,—but it was also the settlement of a most difficult and complicated political problem which had been discussed with the earnestness certain to be seen in the management of all questions relating to property and its safeguards, and this more especially when there were many classes immediately interested in the particular question. On this occasion the classes were not less than three, that is to say, the taluqdárs, the sub-proprietors, and the tenants of the great Province of Oudh. Of these, the taluqdárs had all the advantages which position and wealth naturally gave them; and their baronial pretensions springing from the possession of landed property, and from their rank under the late native rule, had enlisted the sympathy of politicians in this country and of very important statesmen in England. The second and third classes, the sub-proprietors and the tenants, had enjoyed the benefit of the zealous protection of His Excellency the Viceroy. The contest had now happily been brought to a conclusion with the best results of a just and equitable arrangement, but he (THE COMMANDER-IN-CHIEF) would repeat his conviction that this conclusion could never have been attained without the exercise of extraordinary forbearance and moderation on the part of the several members of the Council, who represented different principles; and he would further add that the excellence of the measure before them was greatly due to the fact that those most interested, viz., the taluqdárs, had been personally consulted at all stages.

They sometimes heard of complaints outside of hasty or of over-legislation on the part of this Council. HIS EXCELLENCY did not share in such opinions; but it was indeed satisfactory to point to what had been done in this matter. For not only had the classes immediately concerned been consulted on every detail of the Bill; not only had every such detail been laid before them in the different forms which it successively assumed under the hand of the draftsman after the repeated consultations in Committee, but the principles which the Bill embodied had been submitted to the criticisms, and had received the approval of the ablest and most experienced authorities at home. In short, in one form or other, the discussion might be said to have lasted for seven years, a discussion not at all disproportionate to the importance of the interests and the difficulties of the questions concerned. As to how necessary law-making was now in this country, we had had ample illustration in the statements made to-day by the Hon'ble Messrs. Maine and Strachey, and

to the care and satisfactory manner with which that legislation was on the whole performed by this Council, testimony had been recently borne by competent authorities in England.

The Motion was put and agreed to.

LOCK HOSPITALS' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to enable Municipalities to provide for Lock Hospitals, said that, when the measure ultimately passed as the Indian Contagious Diseases' Act was under discussion by the Legislature at Calcutta, it was fully understood that the greatest part of the cost of bringing it into operation would fall upon the Government, particularly in places where troops were located. Still it was hoped and believed that the Municipalities would not be unwilling to contribute part of the expenses from their funds, considering the extent to which the localities administered by them were interested in the success of the measure. Since the Bill had become law, however, doubts had been expressed whether, under all or some of the existing laws regulating Municipal Government in India, the Municipal bodies could lawfully devote a part of their funds towards defraying the cost of the new machinery. It was not necessary to consider how far those doubts were well founded, but it was clearly expedient they should promptly be set at rest, and this MR. MAINE proposed to effect by the present Bill, which could enable Municipalities to contribute out of their funds to the expenses of the Contagious Diseases' Act, notwithstanding anything contained in the enactments under which they were constituted. MR. MAINE thought that no apology for a permissive measure of this kind was required. The Indian Municipalities had now power to spend money, sometimes in very large amounts, on works intended to cleanse the cities and towns under their care, and thus to relieve the population from malarious and other insalubrious influences. MR. MAINE would be the last person to say a word in disparagement of these undertakings, but those who expected most from them would probably allow that their effects on the public health would be more or less indirect and remote. It seemed then to MR. MAINE the greatest of anomalies and paradoxes that Municipalities should be able to spend without stint on such works, and yet should be debarred from disbursing a single rupee in combating, by methods perfectly direct and absolutely infallible, a disease which poisoned the very springs of life, and probably killed or destroyed its hundreds, for every one person who fell a victim to the maladies against which the works now undertaken by Municipalities were a security. The Bill would be merely

an enabling Bill, and would put no compulsion on the Municipal bodies to whose good sense the matter would be left.

The Motion was put and carried.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business merely for the purpose of enabling him to introduce the Bill and secure its publication. He would not ask the Council to affirm its principle at present by referring it to a Select Committee.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill.

The Council then adjourned till the 29th July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 22nd July 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 29th July 1868.

The Council adjourned till the 30th July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 29th July 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 30th July 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble Major General Sir H. M. Durand, G.C.S.I., K.C.B.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill for the appointment of Justices of the Peace. He said that the necessity for the present Bill arose from the changes which had been made in the jurisdiction of the superior Courts over European British subjects. The Council were aware that the principal function of Justices of the Peace in India was to investigate allegations against European British subjects, and, if necessary, to fine, imprison or commit them for trial to one of the High Courts. Until recently, the High Court at Fort William, on receiving a warrant from the Governor General in Council, issued commissions for the whole of the Presidency of Bengal and the places subordinate thereto and for most of the Native States, and the High Courts of Bombay and Madras similarly, on receiving warrants from the Local Government, issued commissions for their respective Presidencies and the places subordinate to them. But lately a High Court had been established in the North-Western Provinces, and a Chief Court at Lahore, and a Statute had been passed under which the Governor General in Council was empowered to declare that original criminal jurisdiction over European British subjects should be exercised by the several High Courts in such of the Non-Regulation Provinces as might from time to time be determined, and also to exercise jurisdiction in respect of Christian subjects of Her Majesty residing in the Native States. Under this

Act a Notification had been issued under which Mysore and Coorg were placed under the High Court at Madras. The Justices in Mysore and Coorg would accordingly henceforth make commitments to that High Court; and a question had arisen as to whether the High Court at Fort William could any longer exercise its power to issue commissions for those Districts, and it was understood that a difference of opinion on the point existed among the learned Judges of the High Court of Fort William. It was clear that the Government of Madras had no power to issue commissions, inasmuch as Mysore and Coorg were not subordinate to that Presidency. Under these circumstances, an interposition of the legislature seemed absolutely necessary, and if the Council would give him leave to introduce the Bill, they would find that it would settle the matter on the simple basis that commissions for Justices of the Peace should, in future, be issued in all cases by the Court to which they committed. The law on the subject of the issue and supersession of commissions to Justices, and to the administration of their oaths of office, was in a somewhat dispersed condition, and the opportunity would be taken of consolidating the seven enactments in which that law was now contained.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to provide against European vagrancy. He said that the papers on the subject had been for some time before the Council, and on the present occasion, if his motion were agreed to, he proposed merely to ask His Excellency the President to suspend the Rules in order that the Bill might be introduced and published.

The Motion was put and agreed to.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill. He said that the Statement of Objects and Reasons which had for some time been in the hands of members, and which would be published with the Bill, not only described the Bill, but was a condensation of the numerous papers which had been

received on the subject. He did not propose to ask the Council to affirm the principle of the Bill by referring it to a Select Committee until they re-assembled at Calcutta.

The Council adjourned till the 6th August 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 30th July 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 6th August 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

COORG COURTS' BILL.

The Hon'ble MR. TAYLOR introduced the Bill to define the jurisdiction of the Courts in Coorg, and moved that it be referred to a Select Committee with instructions to report in one month. He said that it was unnecessary to take up the time of the Council with describing the Bill, as the Statement of Objects and Reasons which had for the last fortnight been in Hon'ble Members' hands, was in fact a running commentary on its provisions.

The Motion was put and agreed to.

INDIAN DIVORCE BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial causes in England.

Leave was granted.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE introduced the Bill for the appointment of Justices of the Peace. He said that his object in doing so was merely that it

might appear in the *Gazette*, and be sent to the High Courts and the Chief Court of the Panjáb. He would not now ask the Council to refer it to a Select Committee.

The Hon'ble MR. COCKERELL observed that the Bill proposed to repeal certain sections of Statutes of George III and the whole of 2 & 3 William IV, c. 117, and expressed a doubt as to whether the Governor General in Council had power to repeal those enactments.

The Hon'ble MR. MAINE said that the power in question was expressly given to the Governor General in Council by the Indian Councils' Act, 24 & 25 Vic., c. 67, s. 22.

EMIGRATION OF COOLIES' BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to amend the law relating to the emigration of Native Labourers. He said that the Bill, which had been prepared at the desire of the Lieutenant Governor of Bengal, was intended to make four small amendments in the law relating to the emigration of coolies, which had been found desirable since Act No. XIII of 1864 came into operation.

The probable length of the voyage from Madras to Mauritius between the months of November and March, is fixed at five weeks by section eight of that Act. This time had been found too short, and the Bill proposed to extend it to six weeks.

Section 47 of the Act required that the space to be provided for each adult emigrant shall be ten superficial feet on deck. The Bill proposed to increase this space to twelve superficial feet.

Section 64 of the Act empowered the Governor General in Council to prohibit, under certain specified circumstances, the emigration of coolies. With a view to greater promptitude of action in cases of emergency, the Bill proposed to extend this power to Local Governments, but provided that any notification by a Local Government prohibiting emigration, might be cancelled by the Governor General in Council.

Lastly, the Bill authorized the Governor General in Council to increase, within certain limits, the fees payable under Act XIII of 1864, for licensing depôts, recruiters, and emigrants.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define the jurisdiction of the Courts in Coorg,—the Hon'ble Messrs. Maine, Cockerell, and the Mover.

The Council adjourned till the 13th August 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 6th August 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 27th August 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

EMIGRATION OF COOLIES' BILL.

The Hon'ble MR. STRACHEY introduced the Bill to amend the law relating to the emigration of Native labourers, and moved that it be referred to a Select Committee with instructions to report in three weeks. He said that the Bill had been prepared at the request of the Lieutenant Governor of Bengal, and that its object was to make four small amendments of the law which had been found desirable. He need not repeat his remarks when he had obtained leave to introduce the Bill. He would, however, supply one omission which he had then made. The Governor General in Council was empowered to prohibit in certain specified cases the emigration of coolies. To these cases, the Bill proposed to add that of a dangerous outbreak of infectious disease in the place to which emigration was permitted. The necessity for this addition had lately been shown—a deadly epidemic of fever having broken out at Mauritius, and the Madras Government having accordingly assumed the responsibility of stopping emigration to that colony. The course which that Government had taken in the matter was subsequently approved both by the Government of India and the Secretary of State. But its action was *ultra vires*, and the present Bill, if it became law, would expressly authorize the Local Governments to stop emigration in any such case of emergency.

The Motion was put and agreed to.

CARNATIC RECEIVER'S BILL.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business. The Bill was urgently required in Madras, and the suspension was necessary, as the Bill had not been in Hon'ble Members' hands for the period prescribed by the Rules.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill to appoint a Receiver of the property of the late Nawáb of the Carnatic, and moved that it be referred to a Select Committee with instructions to report in one week. He had already described the nature of the Bill, and explained the need of enacting it. The Bill was in substance a revival of some sections of an old Act, and if it had been in form a revival, he would have asked the Council to pass it at once. But in the sections 1 to 7 of Act XXX of 1858, the substance of which was incorporated in the present Bill, reference was made to the abolished Supreme Court at Madras as existing, to the distinction, obsolete in India, between law and equity, and to the institution of suits as mentioned in a part of that Act which was wholly obsolete and had been repealed. Under these circumstances, he proposed to take the usual course of referring the Bill to a Select Committee.

The Motion was put and agreed to.

EXTENSION OF REGULATIONS (MAUZA KHERIA) BILL.

The Hon'ble MR. STRACHEY introduced the Bill to bring the Mauza Kheria, in the District of Agra, under the operation of the general regulations, and moved that it be referred to a Select Committee with instructions to report in one week. He said that the object of the Bill, which had been prepared at the request of the Local Government, was simply to annex the Mauza Kheria to the Agra District, and to extend to the Mauza all Acts and Regulations now in force in that District. The proposed Act would take effect retrospectively from the 26th of July 1866, when the Mauza was transferred to the British Government.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to amend the law relating to the emigration of Native labourers—the Hon'ble Messrs. Maine, Cockerell, and the Mover.

On the Bill to appoint a Receiver of the property of the late Nawáb of Carnatic—the Hon'ble Mr. Cockerell and the Mover.

On the Bill to bring the Mauza Kheria, in the District of Agra, under the operation of the general regulations—the Hon'ble Mr. Maine and the Mover.

The Council adjourned till the 3rd September 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 27*th August* 1868.

Govt. Branch Press, Simla,—No. 1379—29-8-68.—185.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap 67.

The Council met at Simla on Thursday, the 3rd September 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.

CARNATIC RECEIVER'S BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to appoint a Receiver of the property of the late Nawáb of the Carnatic.

EXTENSION OF REGULATIONS (MAUZA KHERIA) BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to bring the Mauza Kheria, in the District of Agra, under the operation of the general regulations.

The Council adjourned till the 10th September 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 3rd September 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap 67.

The Council met at Simla on Thursday, the 10th September 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.

CARNATIC RECEIVER'S BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to appoint a Receiver of the property of the late Nawáb of the Carnatic be taken into consideration. He said that the Committee had merely made two slight additions to the preamble and to the last section.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

MAUZA KHERIA (EXTENSION OF ACTS AND REGULATIONS) BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to bring the Mauza Kheria, in the District of Agra, under the operation of the General Regulations be taken into consideration. He said that the Committee had made no alteration in the Bill. There was nothing for them to consider, nor was there anything for the Council to discuss. Down to July 1866, the Mauza had been foreign territory: it had then become part of British India, and legislation was necessary to extend to it the general Acts and Regulations now in force in the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill be passed.

The Motion was put and agreed to.

NATIVE MARRIAGE BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to legalize marriages between certain Natives of India not professing the Christian religion. He said that the Bill had been prepared at the instance of a sect, of which the origin and general character were probably known more or less to the Council—the Brahmos. It appeared that, since its foundation by Rammohun Roy, the sect had gone through several phases of religious feeling. Of late, its members had become unwilling to contract marriages, or to allow their children to contract marriages, with the rites practised among orthodox Hindús, and these marriages were, MR. MAINE believed, celebrated according to a reformed ritual arranged by the Brahmos themselves. Some doubt, however, having suggested itself as to the legal validity of these marriages, the Brahmos submitted a case for the opinion of the learned Advocate General of the Government of India. Mr. Cowie replied in effect that the Brahmo marriages not having been celebrated with Hindú or Mahometan rites of orthodox regularity, and not conforming to the procedure prescribed by any law, or to the usages of any recognized religion, were invalid, and the offspring of them were accordingly illegitimate. The Brahmos, therefore, through a Native gentleman whom they acknowledged as their representative,—Bábu Keshub Chunder Sein,—applied to the Government of India for relief. Such relief, MR. MAINE apprehended, must be granted. It was not the policy of the Queen's Government in India to refuse the power of marriage to any of Her Majesty's subjects, and he doubted whether even orthodox Hindús would wish to deny to the Brahmos a legal privilege fully enjoyed by Santals and Gonds. Some slight difficulty had occurred in the preparation of the measure. When relief in any matter connected with religion was sought by any sect or body of the Natives of India, and when a case for such relief was established, he held it to be good policy to confine the relief to the particular sect or body making application. Considering the unknown depths of Native feeling on these subjects, it was better not to generalize beyond the immediate necessity, and hence MR. MAINE thought the policy which confined the relief of the Native Converts' Marriage Dissolution Act to Christians was sound, although there were doubtless other classes in the same position. But, after much conversation with the Native gentleman above referred to, MR. MAINE had convinced himself that the creed of the Brahmos lacked stability. The process by which the sect was formed might be increasing in activity; but there seemed also to be

growing disinclination to accept any set of common tenets. It would be difficult for legal purposes to define a Brahmo, and, if no definition were given, there might shortly be petitions for relief by persons who were in the same legal position as the present applicants, but who declared that they could not conscientiously call themselves Brahmos. Hence the Bill had been drawn with some degree of generality. It would legalize marriages between Natives of India "not professing the Christian and objecting to be married in accordance with the rites of the Hindu, Mahometan, Buddhist, Pársí or Jewish religion," provided the marriages were celebrated under certain conditions. The religions mentioned were the only recognized religions of India which were worth referring to. The conditions were as follows :—that marriages should be solemnized in the presence of an official to be styled the Registrar of Native Marriages; that the parties should be unmarried; that the husband should be over the age of eighteen, and the wife over the age of fourteen, and that the parties should not be related to each other in any of the degrees prohibited in the first schedule. If the wife had not completed the age of eighteen years, the previous consent of her father or guardian was also required. The Registrar would be appointed for each district by the Local Government, and would probably be, as in the case of Pársí marriages, the Registrar appointed under the law for the registration of assurances. The Registrar would make a certificate of the marriage, and enter it in his register, which would be open to public inspection. The Bill also contained a clause legalizing prior marriages between the Natives described in the Bill, if the marriage had been solemnized in the presence of three witnesses, and if the provisions as to age, consent, and prohibited degrees had been complied with. Lastly, the Bill contained a clause subjecting every person married under the proposed Act to the penalties of bigamy who, during the lifetime of his or her wife or husband, contracted a marriage without having been lawfully divorced.

The Motion was put and agreed to.

The Hon'ble Mr. Maine then asked the President to suspend the Rules in order that the Bill might be introduced.

The President declared the Rules suspended.

The Hon'ble Mr. Maine then introduced the Bill. He said that it would be in substance a Civil Marriage Bill, having, however, the peculiarity that the persons availing themselves of the new power must not be Christians (to whom a special system of Marriage Registration applied), and must expressly object to be married with the rites of any one of the

recognized Native religions. With religious ceremonial it would not be concerned. The Brahmos could add to the requirements of the law whatever ritual they preferred, and the result would be that, as in several European countries, there would be first a civil and afterwards a religious marriage. It was necessary for MR. MAINE to state to the Council that the Brahmos, through their representative, had made one request which had not been complied with. They had asked for an express legislative declaration that the descendants of persons marrying under the Act should continue to live under the Civil law which was applicable to the last ancestor who professed a recognized Native religion. It would seem, however, that all which the Brahmos required was given by the existing law as laid down by the Privy Council in a most important case, *Abraham* v. *Abraham* (Moore's Indian Appeals, vol. IX, p. 195). It was there decided that a Native of India, abandoning Hindúism or Mahometanism as a religion, and the descendants of such Native, might at pleasure continue to live under Hindú or Mahometan Civil law, or might exchange it for any other set of usages known to the law. The provision requested might, therefore, have the effect of abridging the liberty of the Brahmos, as taking away their power to adopt another, but a recognized, law. MR. MAINE commended the Bill to the Council as one for which a strong case had been made out and one which, after all, involved a very small extension of the principle of the *Lex Loci* Act (XXI of 1850). That Act relieved from all civil disabilities persons excommunicated from any recognized Native religion, or, in other words, the first generation of converts or dissidents, but it did not expressly provide relief to the second and ulterior generations. The omission was partly repaired by the decision of the Privy Council, and would be in part supplied by the present measure.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN moved for leave to introduce a Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native forces. He said that this measure would have been brought before the Council by the Hon'ble Major General Sir Henry Durand, but for his unavoidable absence, and he, Colonel NORMAN, was authorized to state that the Bill had received Sir Henry Durand's entire concurrence. The bulk of the existing Articles were contained in an Act passed in 1861, but this Act had subsequently been amended twice, namely, by Acts V of 1863 and XXVI of 1865. Considering that the Act of 1861 had been passed not long after the suppression of the Mutiny, it was matter of surprise and satisfaction that so few changes of substance had been found necessary. Some such changes, however, were desirable, and it was thought better to embody

them in an Act consolidating the whole law on the subject than to add a fourth to the three Acts in which that law was now contained. The Bill had been prepared with great care in the Military Department. It was then submitted to the Legislative Department, and Hon'ble Members would find that the opportunity had been taken, not only to improve the arrangement of this large and somewhat complicated body of Military Law, but also to make numerous verbal alterations which would have the effect of rendering more precise the description of the crimes punishable under the proposed Act. Care had been taken, however, to avoid falling into the error of over-technical particularity. The Bill would be accompanied by a Statement of Objects and Reasons, which would afford the Council and the Public full information as to all the changes of any importance which the Bill proposed to effect. The Bill was concurred in by His Excellency the Commander-in-Chief, and careful attention had been paid by its framers to the communications on the subject which had been received from the Governments of Madras and Bombay.

The Motion was put and agreed to.

The Council then adjourned to the 17th of September 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 10*th* *September* 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 17th September 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel Norman, C.B.
The Hon'ble F. R. Cockerell.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to make further provision for the maintenance of the Rural Police in the North-Western Provinces. He said that when the Rural Police Act No. II of 1865 was enacted, the provisions in force respecting Khálsá Estates were made applicable under Section 8 to Muáfí and Nazráná villages. These provisions were, first, a house-tax under that Act, and second, the Municipal cess, which was a percentage on the jama fixed at the Settlement in discharge of the obligation of the proprietors for the entertainment of the Village Police.

When the Act was passed, the Municipal cess was fixed at 2¾ per cent. of the jama. But this was found to be inadequate for the payment of an efficient village constabulary. It was in consequence raised, under the orders of the late Lieutenant Governor, to 3⅞ on the assets, or 7¾ on the jama, which amount was found to be sufficient for the purpose, but not more.

As, however, the former amount, according to the original rule, viz., 2¾ per cent. on the jama, was entered in the Act as leviable from Muáfí estates, the Collector was unable to assess such properties at a higher rate. At the same time, it was obvious that whatever burdens for Police purposes were borne by Khálsá villages, should equally be borne by Muáfí villages, that is, that they should contribute in precisely the same proportion.

The Local Government accordingly proposed that, for section eight of the Rural Police Act, a section be substituted, which would be found in section twelve of the Bill.

The Rural Police Act having already been once amended, namely, by Act II of 1866, it has been thought desirable to repeal and re-enact those measures instead of adding a third Act to the two in which the law on the subject is now contained.

The Council then adjourned till the 24th September 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 17*th September* 1868.

Govt. Branch Press, Simla,—No. 1675—18-9-68.—185.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 24th September 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.

BURMESE ÁBKÁRÍ RULES.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to give validity to certain Abkárí rules in British Burma, said that the present Bill was only a temporary and provisional measure, but that its necessity illustrated the difficulties in which the Government was sometimes placed by the operation of the Indian Councils Act. Before that Act was passed, legislation on such matters as Abkárí was, in the case of the Non-Regulation Provinces, practically in the hands of the local executive. Section 25 of that Statute had the effect of giving the force of law to such rules made before the 1st August 1861. The Commissioner of Pegu, Sir Arthur (then Colonel) Phayre, framed Abkárí rules for that province. He sent them up the Government of India, and they received the requisite sanction. The Indian Councils Act would have made these rules law, but unfortunately, instead of being prescribed as permanent regulations, they were re-published annually. Subsequently, the three Provinces of British Burma were combined in a Chief Commissionership, and the Abkárí rules for the Tenasserim and Arakan Provinces were fused with those made for Pegu, and of course partook of the illegality of the latter. The Recorder of Rangoon had lately convicted an offender against the Abkárí rules in British Burma, but the High Court at Calcutta had quashed the conviction, on the ground that no Act of the Indian Legislature could be referred to as giving validity to the rules in question. Legislation of some sort was, therefore, urgently required, and the Financial Department was in correspondence with the Chief Com-

missioner of British Burma as to the introduction into that province of the Bengal Abkárí Act. If that Act were introduced, it would of course supersede the present rules to which he proposed to give a temporary validity. If it were not introduced, it would ultimately be necessary to frame a special Abkárí Act for British Burma.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then asked the President to suspend the Rules for the Conduct of Business, observing that the measure was urgent, as one of its objects was to indemnify officers who had honestly acted in enforcing the present invalid rules.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill, and read it to the Council. He said that the only explanation which it appeared to require was the date, "thirty-first day of March 1868," from which the present rules were to be deemed to have had the force of law. That was the day immediately before the day on which the present rules purported to come into force, and, under Clause 2 of Section 3 of the General Clauses Act No. I of 1868, the former day would be excluded from the period of time mentioned in the Bill. The proposed Act would expire on the publication of a notification of the Governor General of India in Council, and the necessity of passing a repealing Act would thus be avoided when it became desirable to dispense with the present measure. He might mention in conclusion that he had not thought it desirable to adopt the usual practice of placing the rules in a schedule; the language in which they were framed, though very proper in rules for the guidance of Excise Officers, was too vague and popular to permit of their appearing on the Indian Statute Book.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

The Council then adjourned to the 1st October 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 24th September 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 1st October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

The Hon'ble Sir George Couper took the oath of allegiance and the oath that he would faithfully discharge the duties of Additional Member of the Council of the Governor General for making Laws and Regulations.

INOCULATION (KUMAON AND GARHWAL) BILL.

The Hon'ble Mr. STRACHEY presented the Report of the Select Committee on the Bill to prohibit the practice of inoculation in Kumaon and Garhwál, and asked the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. STRACHEY then moved that the Report be taken into consideration. He said that the Committee had made no alterations, and had recommended the Bill to be passed. When he introduced the Bill, he had explained that the Government of the North-Western Provinces had come to the conclusion that legislation on the subject was necessary, and in consequence of this conclusion, the present measure had been prepared. For some time past, the practice of inoculation had been prohibited in Kumaon and Garhwál under the belief that such prohibition was lawful under a certain section in the Penal Code. It had, however, been recently ascertained that such a belief was erroneous. He had explained when he introduced the Bill that the case of Garhwál and

Kumaon was peculiar. Thanks to the administrative energy and good sense of Dr. F. Pearson, Superintendent General of Vaccination, the people of those Districts were said to be protected against small-pox to an extent hardly surpassed in any country. This fact was the sole but sufficient justification for prohibiting locally the practice of inoculation. Hon'ble Members would observe that the Bill gave no power to the Local Government to extend the Act to other parts of the North-Western Provinces, although, under the corresponding Act of the Bengal Council, the Lieutenant Governor had that power. The reason for the conclusion that no such power should be given in the present instance was, that it would be unjustifiable to prohibit inoculation unless where really complete arrangements for vaccination existed. The best authorities were decidedly of opinion that inoculation, however inferior to vaccination, was preferable to the total omission of any such precaution. Now it was and always would be difficult to establish a system of vaccination throughout a great part of the North-Western Provinces, for, in the plains of India, successful vaccination was possible only during a few months of the cold weather, and much of what was called vaccination was not vaccination at all. It was only in the hills, where the temperature for the greater part of the year remained at a comparatively low degree, that it was possible to carry out vaccination so as to protect the whole community. He had recently received a valuable report by Dr. Edmonstone Charles, Superintendent General of Vaccination in Bengal, on the subject of inoculation in that Province, and the facts given in that report entirely bore out the conclusions which he (Mr. STRACHEY) had now stated.

He believed those conclusions to be in accordance with the opinions of the highest medical authorities in India. As Dr. Charles says in the report which he had cited, what was wanted in the plains of India except under those unusual circumstances in which it might be possible to give complete protection by vaccination, was the regulation of inoculation rather than its prohibition.

The Motion was put and agreed to.

The Hon'ble Mr. STRACHEY then moved that the Bill be passed.

The Motion was put and agreed to.

COORG COURTS BILL.

The Hon'ble Mr. TAYLOR presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts in Coorg.

LOCK-HOSPITALS BILL.

The Hon'ble Mr. MAINE moved that the Bill to enable the Municipalities to provide for Lock Hospitals be referred to a Select Committee, with instructions to report in a week. He said that in last July, he had introduced the Bill for the purpose of being published in the Gazette, so that the opinion of the public on the measure might be elicited. No remarks, so far as he was aware, had been made hostile either to the principle or the details of the Bill. The Bill in fact was merely an enabling measure, and no objection could, he thought, reasonably be made to its enactment.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable Municipalities to provide for Lock-Hospitals—the Hon'ble Mr. Cockerell, the Hon'ble Sir George Couper, and the Mover.

The Council then adjourned till the 8th October 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 1st October 1868.

Govt Branch Press, Simla,—No 1857—3-10 68—185

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 *Vic., Cap.* 67.

The Council met at Simla on Thursday, the 8th October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

COORG COURTS BILL.

The Hon'ble Mr. TAYLOR moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts in Coorg be taken into consideration. He said that since the Bill was introduced he had had the advantage of consulting the present local authorities on its provisions, and the Committee had adopted several useful suggestions made by the Officiating Judicial Commissioner, in which the Commissioner also had expressed his concurrence. In the Bill, as introduced, certain sections were inserted, providing for the criminal powers to be exercised by the several grades of Courts, and that their proceedings generally should be regulated by the Code of Criminal Procedure. On the understanding that this Code, which was already *de facto* in force in Coorg, was about to be formally extended to the Province by an executive order, the Committee considered that the sections referred to, namely, 21, 22, 26 and 28, were unnecessary, and had accordingly struck them out of the Bill. Since coming to the Council, however, certain papers had been placed in his (Mr. TAYLOR's) hands which showed that the non-extension of the Criminal Procedure Code to the Province of Coorg, in the Notification of 1862, which extended its provisions to the territory of Mysore, was an accidental omission; that its extension to Coorg was, indeed, approved by the Government of India though the sanction was not communicated to the Commissioner, and that the local

officers had for the last six years exercised the powers conferred by the Code. Under these circumstances, it seemed desirable to add a section to the present Bill, the adoption of which would be presently moved by Mr. Maine, which would meet the object as effectually as the usual Notification in the *Gazette*, and would have the additional advantage of legalizing the proceedings of the officers of Government for past years.

The Committee had also struck out the clause in Section 4 requiring the previous sanction of the Governor General in Council to the investment of Párbatiyagár and Náib Súbahdárs, officers who resembled Tahsíldárs in this part of India, with power to try suits of a small amount. This would save delay and correspondence.

Section 24 of the Bill as introduced, specially provided for the exercise in Coorg of sessional jurisdiction by the Superintendent of the Ashtagram Division in the Province of Mysore. The Officiating Judicial Commissioner remarked, and the Commissioner of Coorg agreed with him, that this provision was objectionable as amounting in point of fact to a recognition as a permanent arrangement of the accidental connection now subsisting between Mysore and Coorg. The Committee had, therefore, substituted a clause empowering the Governor General in Council to appoint any subject of the Queen to be Sessions Judge of Coorg, declaring that such Judge should, as often as might be necessary, hold sessions within that Province, and providing that he and the Judicial Commissioner respectively might hear appeals beyond its limits.

There was no other material alteration or amendment in the Bill to which he need call the attention of the Council.

The Hon'ble Mr. MAINE moved that the following section be added to the Bill :—

"25. The Code of Criminal Procedure shall extend to the said Province, and shall be deemed to have been in force therein from the ninth day of December 1862."

And that Section 1 be altered thus,—

"1. This Act may be called "The Coorg Courts Act."

"Section 25 shall take effect at once, and the rest of this Act shall come into operation on the first day of December 1868."

The Motion was put and agreed to.

The Hon'ble Mr. TAYLOR then moved that the Bill as amended be passed.

The Motion was put and agreed to.

LOCK-HOSPITALS BILL.

The Hon'ble Mr. MAINE presented the Report of the Select Committee on the Bill to enable Municipalities to provide for Lock-Hospitals.

PANJAB TENANCY BILL.

The Hon'ble Sir R. TEMPLE presented the Report of the Select Committee on the Bill to define and amend the Law relating to the tenancy of land in the Panjáb.

The Council then adjourned to the 15th October 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 8th October 1868.

Govt. Branch Press, Simla,—No. 1910—10-10-68.—185.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 15th October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

LOCK-HOSPITALS BILL.

The Hon'ble Mr. MAINE moved that the report of the Select Committee on the Bill to enable Municipalities to provide for Lock-Hospitals be taken into consideration. He said that he had already fully explained the nature of the Bill, which was merely a permissive measure; that the Committee had made no change therein; and that he had observed with satisfaction that, in anticipation of the Bill's becoming law, the Calcutta Justices of the Peace had included in their Budget for the ensuing year a sum for the maintenance of Lock-Hospitals.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

EXEMPTION FROM REGISTRATION BILL.

The Hon'ble Mr. COCKERELL presented the report of the Select Committee on the Bill to exempt certain instruments from the Indian Registration Act, 1868.

The Council then adjourned till Monday, the 19th October 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 15th October 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Monday, the 19th October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

EXEMPTION FROM REGISTRATION BILL.

The Hon'ble Mr. COCKERELL moved that the report of the Select Committee on the Bill to exempt certain instruments from the Indian Registration Act, 1866, be taken into consideration. He said that, when this Bill was last before the Council, he had noticed what might be deemed to be the principal objection to it, viz., that it would have the effect of disturbing that continuity of the record of interests in immoveable property which the Registration Act especially aimed at providing, and he had expressed the hope that this objection might be met by the insertion in the Bill of a provision for securing the transmission to the registering officer of copies of all exempted documents, with a view to their being recorded in the Registration Office in the same manner as memoranda of decrees of the Civil Court.

The Local Governments were consulted as to the effect of such a provision, and in reply, the Government of the North-Western Provinces raised strong objections to the proposal in regard to settlement records, on the ground of the expense which would have to be incurred in the preparation of copies of those records, and the uselessness of their being recorded in the Registration Office, inasmuch as they were already sufficiently available for inspection by the public.

As this ground of objection would apply equally to the documents specified in the second and third clauses of the schedule, provision had been made in the new section 3 of the Bill for the transmission to the Registration Office of the documents specified in clause 4 of the schedule only, and to secure the certainty of the other exempted documents being made available for inspection by the public, provision had been made in section 2 for persons who might desire information in regard to the subject-matter of such documents, obtaining the same facility of access thereto as they would have enjoyed had the documents been regularly registered or placed on record in the Registration Office.

At the instance of the Governments of Bombay and Madras, the words "maps" and "inám title deeds" have been inserted in the 2nd and 4th clauses of the schedule, respectively.

In the second clause also a distinction had been drawn between general surveys to documents connected with which the exemption was intended to apply, and the mere survey of waste lands which preceded their demarcation and allotment to purchasers. It was not desirable to exempt from registration documents connected with the latter class of surveys.

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved that the Bill be passed.

The Motion was put and agreed to.

PANJÁB TENANCY BILL.

The Hon'ble Sir R. TEMPLE moved that the final Report of the Select Committee on the Bill to define and amend the Law relating to the tenancy of land in the Panjáb, together with the Bill as amended by them, be taken into consideration. He said that the previous history of this Bill would be in the recollection of this Council. For particulars it would suffice to refer to the proceedings of the Council of the 17th January and the 11th April last.

On the last-mentioned date, that is, the 11th April, he obtained leave to refer the Bill to a Select Committee. On the 15th July he presented the preliminary Report of that Committee, together with an amended Draft Bill, and obtained permission to refer the same to the Local Government and to the judicial authorities of the Panjáb. On the 8th October he presented the final Report of the Committee with a Bill reconsidered and amended after receipt of replies from the Panjáb. And he now moved that this report be taken into considera-

tion with a view to the Bill being passed without amendment, or with such amendment as might to His Excellency the President and to the majority of the Council seem fit.

The report now in the hands of the Council was explicit as to the alterations in, or additions to, the original Bill, as proposed by the Committee. He would therefore not recapitulate these, but would merely state the reasons which have actuated the Committee in respect to some of the more important of their recommendations.

The Council would see that the Bill was divided into seven Chapters, I., Preliminary; II., Rights of Occupancy; III., Rent; IV., Ejectment; V., Relinquishment, leases, alienation, succession; VI., Compensation for tenants' improvements; VII., Procedure.

In the preliminary chapter, the most important point was this: the Committee provided in Section 2 for the strict upholding of all agreements between landlord and tenant, when such should have been separately executed, or else recorded by the Settlement Officer. But then the question arose, what was an agreement recorded by a Settlement Officer? In practice, these agreements being very numerous, were not separately recorded, but were usually entered in a general statement or schedule for each village, which important document was attested item by item by a responsible official, and signed by the parties or their representatives either by signature or mark. Such entries, though not supported by separate documents, were nevertheless truly and really agreements. Still, unless some specification were added, the Committee feared lest there might be doubt hereafter as to whether these entries were agreements within the meaning of the Act.

Therefore they proceeded to lay down that such entries, when duly attested, should be held to be agreements within the scope of this section. This was necessary to guard the tenant-rights secured by the Settlement records.

In Chapter II., relating to occupancy rights, the 5th and 6th Sections were in some respects, the most important in the whole Bill; for these defined the status of an occupancy-tenant, and these were intended to answer the primary question as to who were the tenants to be deemed to possess rights of occupancy. Now, the original Bill, as prepared by Mr. E. Brandreth, late a Member of this Council, and then in charge of the measure, described occupancy-tenants mainly as those who had been declared to be such in the Settlement records. When this was first referred to the Panjáb authorities in

February last, this definition was considered to be not sufficiently complete or accurate. So this particular definition was proposed to be modified, and certain other definitions were proposed to be added. Now, after the best consideration which the Committee were able to give, they had adopted most of the additional definitions with certain simplications, but they had retained in its essentials the original definition.

The result was that the Committee had been obliged to classify the occupancy tenants into five categories: the first four categories comprised various superior classes of tenants, and the fifth comprised those who had been so recorded at the Settlement. The fifth, however, was the most important, and really embraced the other four, inasmuch as all the superior classes of tenants were undoubtedly recorded at the Settlement as occupancy-tenants. It would, therefore, suffice to notice briefly the reasons why the validity of the Settlement record had been so carefully upheld in Section 6. This section laid down that a tenant recorded at the Settlement as having a right of occupancy should be presumed to have that right, unless the landlord could rebut that presumption by a regular suit on particular grounds. But then these grounds of rebuttal were strictly limited to circumstances which would prove an actual error in the record. And the practical effect must be that the Settlement record was for the most part to be declared valid by law. Now, what were the grounds for conceding by legislation such validity to the record?

It were needless to dwell on the vast efforts put forth by the Panjáb Government to make that record a really good registration of landed tenures, on the liberal expense incurred, on the experience of the officers engaged in supervision, on the scale of establishments allowed, on the years devoted to the enquiry, on the patient frequency of revision so as to ensure ultimate accuracy. With all this, there was no doubt that mistakes occurred, although, on the whole, the record was, as might have been expected, an admirable one. But in respect to tenant-right, there was probably as little mixture of mistake as in any respect; for, in this particular, there was a clear rule to go by. The Settlement Officers understood that in regard to occupancy-right, they were to look to incidents and circumstances, and quality of tenure, to local custom, and the like. But failing the ascertainment of this, they were, unless there should be reason to the contrary, to regard a tenant who had been in possession twelve years and upwards, as entitled to right of occupancy.

On what reason then was this twelve years' rule founded? In his speech before this Council on 11th April last, he, Sir R. TEMPLE, showed the uncertainty

which hung round all rights, superior or inferior, in land during the period which preceded the introduction of British rule into the Panjáb. If the rights of tenants were weak, so were the rights of landlords. If there were indications which justified the confirmation of proprietary right to the proprietors, there was exactly similar justification for confirming the occupancy-right of the better classes of tenants. If the traces of tenant-right were often dubious, or for a time obscured, the same remark applied to the proprietors. The Sikh government used to treat the proprietor and the cultivator much in the same way. Though acknowledging the existence of proprietorship in the abstract, the Sikhs used to look to the occupant—to the man in possession. On him was cast the then heavy fiscal burden. On him devolved the real labour of management. Thus it happened that, under Sikh rule, all good tenants used to be treated much as under-proprietors, and inasmuch as the burden was so severe, such a mode of dealing was considered as convenient by the proprietor. It was, therefore, deemed but just that, while unprecedented security was afforded to the proprietors, something of the same sort should be secured to the better classes of tenants. Certainly such tenant-right was not opposed to custom: there was no *lex loci* against it; the presumption, indeed, was in favour of such right, according to the circumstances of the Panjáb. But local custom, though often traceable, was seldom quite proveable, or was not absolutely ascertainable. If *that* were to be the sole guide, the opinions of no two officers would agree: in no two districts would the result be similar. In one place there would be a tendency to award occupancy-rights to too many, in another place to too few. It was essential that a line should be drawn somewhere by some better criterion. Under such circumstances, it was inevitable that regard should be largely had to possession and to period of occupancy, which things could certainly be ascertained, and about which there could not be much mistake. Then, if a period of qualifying possession was to be assumed, what was that period to be? Why, the analogy of the older Regulation Provinces was followed, and a period of twelve years was assumed. That was a period well known all over the great Presidency to which the Panjáb was annexed; it had been observed in Courts of Justice since the earliest period of British rule in Northern India; it had been embodied in all directions to the land, revenue authorities; it was understood by the people of the Provinces adjoining the Panjáb.

If then the majority of occupancy-tenants had that position awarded to them at the Settlement by reason of twelve years' possession, that reason was a good one: that rule was *per se* a reasonable one. About this fact of

possession there was little or no error. According to *this* test at least, nearly all the occupancy-tenants were recorded correctly enough without any mistake in fact whatever. The mistakes alleged against the records chiefly related to custom—a thing which, though existing more or less, was yet peculiarly vague at that time in most parts of the Panjáb, and in regard to which it would have been nearly impossible to say what was correctness and what incorrectness.

Moreover, according to the general sense of the people just emerging from troubled, harassed, and even revolutionary times, a period of twelve years' possession *did* give a man some claim. The proprietors not only refrained from objection, not only consented, but were positively willing and often desirous that claims thus supported should be recognized and recorded. They *then* thought it for their best interests that this should be done as tending to organize a staff of tenants who would be the mainstay of the lands in future troubles. They might, indeed, think differently now after the lapse of half a generation, when they saw the value of land rising fast, when they found that the troubles of the past were happily averted, and were not likely to recur under British administration. But a change, real or fancied, in their interest, could not justify the setting aside of agreements deliberately and formally made at that time of Settlement.

Thus it came about that occupancy-rights were recognized as belonging to, or were judicially awarded to many thousands of tenants in the Panjáb. The settlement was made before the people, and was thoroughly known to all parties. It was afterwards confirmed by the Government, and that confirmation was publicly notified. Since the completion of the settlement, years had elapsed, in some districts fifteen, in others ten, and so on. Thus there were thousands of tenants who had been at least twelve years in possession before the settlement, who had then been told by authority that they were occupancy-tenants, and who had been ten or fifteen years in possession since; in all, for nearly one generation. It was too late now to interfere with such tenures, or to deliberate whether the settlement was right or not (though, indeed, there was every reason for supposing that it was right). And these cases, though strong enough, were the comparatively weaker ones. Many cases were far stronger, as the men had more than twelve years' possession, or had something in the shape of custom, if not actually full custom, in their favour.

Various proposals, from first to last, had come before the Committee for re-examining the principles on which the settlement in this branch was made. But, on full consideration, the Committee decided to maintain the substance of Section 6 as it now stood. It was felt that any relaxation would leave

the status of thousands of tenants open to dispute or to revision; and that men should not now be required to defend a position so long ago recognized, so formally guaranteed, so continuously enjoyed. Moreover, even if such enquiry were just (which it really was not), still after such a lapse of time it could not be brought to any satisfactory conclusion.

Therefore Section 6 had been framed so as to uphold the title previously recognized at the settlement as belonging to occupancy-ryots, and to narrow within strict bounds the power of rebutting this presumption.

But while pre-existing rights were fully respected in the Bill, care had been taken to avoid the creation of rights not as yet existing, and so it had been provided that, in the future, no tenant should be deemed to acquire occupancy-right by mere lapse of time. This was desirable for the sake of the landlords.

In Chapter III. relating to rent, due provision had been made in Section 11 for the enhancement of the rent, even of occupancy-tenants, on grounds specified, which grounds, if established, would go to prove that the rent might be reasonably enhanced in justice to the landlord. Herein, however, a margin of privilege and advantage had been allowed to the occupancy-tenant, that is to say, he was to pay so much less than the ordinary tenant. Further, this margin had been apportioned to the different classes of occupancy-tenants, the beneficial margin being for some classes as much as 40 and 50 per cent. of the ordinary rent, and for other classes, 15 per cent.

It had been provided by Section 10 that the rent of no tenant,—occupancy or other,—should (in the absence of agreement) be enhanced without decree of Court. But in the case of tenants-at-will, it must be remembered that the landlord could eject by notice.

The payment of rent in kind had always been known in the Panjáb; indeed, the revenue used often, under Native rule, to be paid in this manner. It was possible that applications might be made for commutation of rents in kind to rents in cash, or *vice versâ*. After full consideration the Committee had decided by Section 16 that, for such commutation, the consent of *both* landlord and tenant should be necessary.

After rent had been enhanced by decree, it was not, Section 13, to be further enhanced for five years, unless there had, in the meantime, been a revision of settlement—the object being to prevent the tenant being harassed by too frequent enhancements.

Questions of abatement seldom arose in the case of tenants-at-will. But with occupancy-tenants, these questions might arise. Therefore, in Section 14 the grounds on which alone an occupancy-tenant could claim abatement had been specified. This was desirable quite as much for the sake of the landlord as of the tenant.

In Chapter IV. relating to ejectment, it was laid down in Section 19 that an occupancy-tenant could only be ejected by decree of Court. And such an ejectment could only be decreed when either there was an unsatisfied decree for rent, or when compensation was to be tendered by the landlord. In this chapter, indeed, the most noticeable part was clause 2 of this section, wherein provision was made for the ejectment even of an occupancy-tenant on payment of compensation. He (Sir R. TEMPLE) had explained, in his speech of the 11th April last, that this provision had been introduced at the special request of the Hon'ble Sir Donald Macleod, the Lieutenant Governor of the Panjab. The grounds on which the policy and justice of this proposal must rest, were fully set forth in His Honour's Minute of the 10th February last. It would suffice to quote one brief passage from that paper:—

"My own opinion is that, while great and permanent dissatisfaction as well as serious obstruction to progress would result from declaring the occupancy of the ordinary hereditary tenant to be permanent, this principle of granting compensation on withdrawal of land, if prudently applied, would operate most beneficially and be readily accepted by nearly all. No sudden or startling change would be thus introduced. * * *. Seeing also how constant is the tendency in India to excessive sub-division, and how rapid the progress of the country promises to be in population as well as in agricultural, manufacturing, and commercial activity, it appears to me to be a matter of no small moment that the transfer of capital from agricultural to other pursuits in the more densely-peopled parts should be as much as possible facilitated."

The principle was no doubt novel to Indian practice, and there had been difference of opinion in the Committee in regard thereto. It had been retained partly in deference to the views of the Local Government, partly because there was every desire to look to the fair interest of the landlord while securing the rights of the tenant, but mainly because the plan, though new, was fair enough in regard to at least the large majority of occupancy-tenants as they were actually circumstanced in the Panjáb. Many were thus recorded at the settlement mainly by reason of a certain period of possession without any special

privileges of tenure. That such persons should be bought out by compensation, seemed to be just enough, provided always that the compensation were substantial. And the Committee had taken care to provide an adequate rate of compensation. Even then, however, doubt would arise as to whether the superior classes of occupancy-tenants should be liable to be bought out. Sir D. Macleod would (as the Committee understood him) specify certain classes of these tenants as excepted from that liability. But on close examination, it had been found difficult to draw a line for this purpose between one class and another. No exception had therefore been proposed. As an amendment was likely to be proposed, or as, at all events, objections were sure to be raised in Council, it seemed sufficient for the moment to state briefly as above the reasons why this clause had been retained.

Tenants without right of occupancy might be ejected by notice from the landlord. It seemed desirable to declare the landlord's power in this respect.

Chapter V. related to relinquishment, leases, alienation and succession. In respect to leases, all tenants having a right of occupancy were to be allowed by Section 32 to let and sub-let their lands. But then by Section 33, the landlord's authority over the sub-lessee had been secured. In respect to alienation, the Committee had carefully considered how far occupancy-tenants should possess this power: the point being one on which custom was not clearly pronounced. It had been decided by Section 34 that the superior classes, described in Section 5, who were almost sub-proprietors, should have this power with merely a reservation of right of pre-emption to the landlord at the market value. All other tenants, including the occupancy-tenants of Section 6, that is, the great majority of occupancy-tenants, must obtain the landlord's consent to proposed alienation. This distinction seemed suitable to the circumstances of the occupancy-tenants in the Panjáb, and showed the caution exercised by the Committee in affirming this privilege

In this Chapter there was an important section (36) regarding the succession to occupancy-right. That such a right should devolve on direct male lineal descendants, had perhaps remained unquestioned. But the question arose as to whether, failing such heirs, the succession should go to collaterals or not. It had been decided that this should go to male collaterals. A further question arose as to whether the condition of residence in the village should be attached to such succession. A condition to this effect had been inserted in the Bill, but there was difference of opinion on this point, and probably objections

would be raised in Council. At all events, the observance of the main principle of succession had been secured.

Chapter VI. related to compensation for improvements made by tenants. The provisions were simple, sufficient for the present state of things. If, from canal irrigation or other cause, a regular era of improvement should set in, further legislation would be needed in detail.

By Section 37, in the case of occupancy-tenants, if the tenant himself or the person from whom he had inherited, had made improvements on the land, then his rent was not to be enhanced, nor was he to be ejected till he had received compensation for the money and labor so expended within the previous thirty years. In the case of tenants without right of occupancy, the same rule was to apply to improvements made by the tenant himself, but not necessarily to improvements made by his father or ancestor. The question arose as to whether he should not be entitled to compensation for improvements made by his ancestor. These were held to be difficulties in making such a rule for tenants-at-will, and so the section stood. There would probably be some difference of opinion on this particular.

It had been provided in Section 41 that this compensation might be afforded by the landlord partly or wholly by a beneficial lease. This of course applied to tenants-at-will. How far a particular lease might be tantamount to the compensation, must be decided by the Court. And Section 40 provided for the determination of disputes of this nature. But if such lease should be for a term of twenty years at the annual rent paid by the tenant at the time of the offer, then such offer, if accepted by the tenant, would bar claim to compensation for improvements.

Consideration had been given as to what should constitute an improvement; and this had been defined in Section 38 to consist of works whereby the letting value of the land had been and continued to be increased. This was necessary, among other things, to guard against compensation being demanded for futile improvements. If further question arose as to the compensation, it must be decided by the Court under Section 40. No reservation had been made of the power of the landlord to take the execution of an improvement out of the hands of the tenant, and to execute it himself. In the case of occupancy-tenants, it seemed doubtful whether such power should be specially reserved to the landlord. In the case of other tenants, the landlord could always reserve such power to himself by agreement. Nor had any allusion been made to the consent of the landlord being necessarily obtained by the tenant. As regarded

occupancy-tenants whose right was a species of property, there might be doubt as to the propriety of making such a provision. As regarded other tenants, if the landlord choses he could impose a restriction beforehand; but if he allowed an mprovement to be made by a tenant, and had not objected, his vertual consent was inferrible. On the whole, it was good that the tenant should make improvements, and that in doing so, he should be as unfettered as possible. It was also probable that whatever improvements were made in tenant lands would be made by the tenants themselvs, the landlords in the Punjáb being mostly peasant proprietors fully occupied in working their own glebes.

Chapter VII. merely adapted the procedure to the machinery and constitution of the civil administration of the Panjáb.

Such then were the principal considerations relating to this Bill: further details were given in the Committee's report. Endeavour had been made to secure what was fair both to the tenants and to the landlords.

For the protection of the tenants, the occupancy status, as defined by the settlement, had been preserved, and the engagements then entered into had been adhered to; the re-opening of questions then formally decided had been barred; the enhancement of rent, save by decree of Court, had been stopped; and even then a beneficial margin had been secured for occupancy classes: ejectment of occupancy classes, save by decree of Court, had been prevented; the right to sub-let had been reserved for all occupancy tenants, and the power of alienation had been proposed for some classes of them; the terms of succession to occupancy-rights had been declared; the grant of compensation on eviction for all improvements made by tenants, whether occupancy-tenants or other, had been carefully provided for.

On the other hand, in the just interest of the landlord, the means had been afforded for rebutting the validity of the settlement in cases where real invalidity was apparent. It had been declared that in future, no tenant should be deemed to acquire right of occupancy by mere lapse of time; the power of enhancing the rent even of occupancy-tenants had been affirmed; the grounds on which an occupancy tenant can demand abatement of rent have been limited; the right of ejecting tenants-at-will merely by notice had been declared; the consent of the landlord to alienation even by occupancy-tenants, save those of the superior classes, had been rendered necessary; even in those cases where right of alienation was allowed to the tenant, the right of the landlord to pre-emption had been reserved; the power of the landlord over the sub-lessees of

his tenants had been secured; and lastly a power had been proposed for the landlord of terminating occupancy-rights by the tender of compensation.

Sir R. TEMPLE now submitted this Bill for the consideration of His Excellency the President and of the Council, with some confidence that it would stand the tests supplied even by His Excellency's vast experience. That confidence was based not only on the knowledge he (Sir R. TEMPLE) necessarily had of the people concerned in this measure, having for years pitched his tents among them, but also on the strong support and aid received from his Hon'ble Colleague Mr. Strachey, who had successfully introduced a similar Rent Bill for Oudh, on the thorough examination of principles afforded by their learned Colleague Mr. Maine, and on the care and acumen brought to bear on the drafting of the sections and clauses by the Secretary to the Council, Mr. Whitley Stokes.

The Hon'ble Mr. MAINE said "Sir, there is much in the Bill of my Hon'ble friend on which it will be safe for one who has not passed the greatest part of his life in India to abstain from pronouncing positively, but some questions of principle are raised by it on which I may be entitled to have an opinion. The views which I have formed on them (which happen for the moment not to be popular views), I am the more anxious to state, because, though the subject-matter of the measure has undergone much public discussion, I do not think justice has been done to the side of the questions involved to which I am compelled to incline. Before, however, I come to the merits of the Bill, it is perhaps proper I should say something on a point which was much discussed when the Bill, then in Mr. Brandreth's charge, came before your Excellency's Council. I was not in India at the time, but I see that several Members of the Legislature expressed doubts whether any legislation at all was required, and whether the law, as applied by the Settlement Officers and Civil Courts of the Panjáb, should not be suffered to take its course. The facts of the case are now much more clearly known. We have not before us the statistics of the recent Settlement for the whole province, but we have them for one Division. It appears that in the single division of Amritsar 60,000 heads of households were recorded at the first Settlement of the Panjáb as entitled to beneficial rights of occupancy. At the recent settlement, 46,000 of these cultivators have been degraded to the status of tenants-at-will. If the same proportions be maintained for the whole province, these numbers denote some hundreds of thousands. It would appear, however, from a Minute of the Chief Court of the Panjáb, that, though the Settlement Officers employed the Settlement Regulation of 1822 to produce these formidable results, they did not think fit to follow

the prescribed procedure, but have adopted a procedure of their own, unknown to the law. The Chief Court states accordingly that all the settlement operations have effected is a 'superior description of registration.' But that is not all. It seems that the Settlement Officers, from compassion or compunction, did not in all cases degrade the occupancy-tenant at once to a tenancy-at-will. They allowed him a period of grace, during which he was to retain his rights of occupancy. The Chief Court has decided that they had no power to do anything of the kind, and that in such cases the higher status must continue indefinitely. Sir, I observe with regret that, during the sittings of the gentlemen who recently assembled at Murree to consider the amended Bill, an attempt was made to get some words introduced to it reflecting on this decision of the Chief Court. I do not suppose that anything I may say can add authority to the Court's opinion, but still I am bound to state that it appears to me—and what is more important, I believe it appears to your Excellency—that the Chief Court was entirely and obviously in the right, and that the functions of a Settlement Officer are confined to declaring the class of tenure to which the holding of each cultivator belongs. This decision of the Chief Court, however, in Amritsar alone, affects no less than 22,000 cases. In one division, there have been 46,000 rulings on rights to land, of which 22,000 are bad in law. We are threatened with an agrarian revolution, to be immediately followed by an agrarian counter-revolution. In such a state of things, it is probably superfluous for me to argue on the necessity for legislation, and indeed I greatly lament that the course of circumstances has prevented your Excellency's Government from stepping in earlier, and with a high hand forcing a compromise on the official disputants in the Panjáb.

And now, Sir, as to the Bill before the Council. I do not mean to oppose it. Indeed, as a Member of the Committee, I have joined unreservedly in the recommendation that it be passed. But the chief ground on which I support it is that affairs in the Panjáb have come to such a pass that no arrangement of the matters in dispute is now prudent or politic, except one in the nature of a compromise. The controversy between the officials has extended to the Natives; the fears of one class and the expectations of another have been roused, and it thus become imperative on the Government of India to avert great political evils by taking a decided course and effecting a settlement intermediate between extreme views. I further refrain from placing any impediment in the way of the Bill, because your Excellency, who certainly cannot be accused of any fanatical dislike of tenant-right, does not think that the measure as now settled by the Select Committee will inflict intolerable hardship on

the large class it will affect. But, Sir, I am bound to say that but for this feeling on your Excellency's part, and but for my conviction that nothing but a compromise of some sort is now admissible, I should have the gravest doubts of the wisdom, fairness, and expediency of the Bill. I should doubt whether it did not go much too far in countenancing proceedings, which seem to me to exhibit characteristics rarely found together in India, and to combine an attack on tenant-right with an attack on the stability of the rights of property. Let me say, however, that I do not think that, properly speaking, the Bill raises the question of the expediency of tenant-right. I can quite understand two opinions being held as to the well-known rule of Act X of 1859, under which there is a perpetual creation of new tenant-rights. I can understand two opinions on the question of tenant-right as it presents itself in Ireland, and as it presented itself three years since in Oudh. But when tenant-right has once existed for a definite period of years, when it has been protected by Government and law, and when it has become vested in specific individuals, it appears to me just as much deserving of respect as any other form of property. All question of its expediency disappears, and the principles of justice and statesmanship no more admit of its violent destruction than they do of the confiscation of copyholds.

Sir, in order to explain the grounds on which I should dispute the equity and common fairness of this Bill, if I thought the question open to any arrangement except one of the sort which it proposes, I must repeat those amazing figures which I read to the Council a few moments ago. At the first Settlement of the Panjáb, 60,000 heads of agricultural households were in the single division of Amritsar recorded as having beneficial rights of occupancy in their holdings. At the present Settlement, 46,000 of these occupancy-tenants have been degraded to the position of tenants-at-will, liable to eviction and rack-rent. Sir, the exact economical position of the ryot whose tenure is one of occupancy, I take to be this. He cannot be evicted except on certain conditions, and the profits of the cultivation of the soil (independently of the share of those profits taken by the Government as revenue, and independently of the portion which represents the cost of tillage, and of the cultivator's subsistence, and the interest of whatever capital he may have embarked) are divided under varying rules of law between the occupancy-tenant and the landlord, instead of going wholly to the landlord, as in the case of a tenant-at-will. This being so, I have always held the opinion attributed to me at a recent sitting of this Council by my Hon'ble friend Mr. Strachey, that, in strictness of language, the occupancy-tenant is a co-proprietor with the landlord. Rights over land or any valuable commodity are either rights arising out of contract or proprietary rights.

This distribution of rights is considered by the best jurists as exhaustive; if then the occupancy-ryot does not hold (and it is clear he does not hold) under contract, it follows that he has some sort of right of property in the land. There has, therefore, been in the district of Amritsar an attempt at a clear confiscation of property to the extent indicated by 46,000 heads of agricultural households. These 46,000 persons are, it is proposed, to be placed in the same condition as if they had merely contracted for the use of the land. Not only that. A contract may be highly beneficial; but the contract under which these ex-proprietors are to hold, either at once or ultimately, is the least beneficial of all contracts connected with land—a tenancy-at-will and at a rack-rent. If the Settlement Officers of the Panjáb are allowed to have their way—and in order to have their way, they have left no stone unturned which an Indian functionary can move—these 46,000 households will be completely dependent on the will and pleasure of others for the liberty of remaining on the land, and will pay for that liberty exactly what those others choose to demand. And taking the whole province, there must be hundreds of thousands of cultivators whose proprietary status has been similarly degraded.

Now let me trace the history of those advantages of tenure of which it is proposed to deprive these unhappy persons. First, what has been the duration of their beneficial enjoyment? Fifteen years is a fair average time to assume for the duration of the first settlement, though in some parts it has lasted considerably longer. It is conceded, and this is the very ground of objection to the first settlement, that the status then recorded corresponded with the actual facts as they existed for at least twelve years preceding. It is, therefore, a beneficial enjoyment and possession of at least a quarter of a century, and probably of a far longer period, which it is now sought to disturb. But that is not all. Sir, I say that for the last fifteen years, these rights have been enjoyed under a distinct protection and guarantee of permanency by the British Government. I commend to the attentive consideration of the Council the earlier part of the valuable Minute of the Chief Court. It is there shown that at the first settlement of the Panjáb, the officers employed did not merely, as in older Indian settlements, construct a record which was only a *primâ facie* description of the rights therein described. The Panjáb officers were invested with judicial powers, and the Civil Courts were carefully excluded from interference with their decisions, which when given on merits became the decisions of Judges. Of course I do not mean to say that they adjudicated in every case. No court of justice ever adjudicates in more than the minutest fraction of the cases really, though indirectly, affected by its jurisdiction. But it is clear that everybody, landlord or tenant, had an

opportunity of coming forward to assert his rights in litigious form, and had power to appeal from decisions which he thought inequitable, and every decision of the Settlement Courts must have indirectly disposed of thousands of cases not actually brought before them. I can scarcely conceive any stronger guarantee given to these rights. A Parliamentary title to property is necessarily somewhat arbitrary; but when a Government sets its courts of justice in motion for the affirmation of rights, bringing them to the very doors of claimants and opponents, it gives a moral guarantee of the highest order. These tenants, therefore, Sir, have been in possession for at least 27 years, and for 15 years of that time have enjoyed their rights under the protection not only of the British Government, but of British courts of justice. Let me now ask whether they are an idle and thriftless class, whom it is expedient to improve off the face of the earth. Sir, the evidence to the contrary, which has been laid before me, is truly astonishing. I have been told of parts of the Panjáb which were little better than a wilderness before annexation, and which now bloom like a garden, mainly through the industry of these tenants. I have heard of villages voluntarily paying more for the mere rent of irrigation-water than the whole amount of revenue, which, at the time of annexation, it was thought fair to demand from them on the part of the Government. Sir, I do not adduce the proved laboriousness of these cultivators simply by way of appeal to compassion. It constitutes my main answer to the proposition so often occurring in these papers that 'it was the British Government which introduced rights of occupancy into the Panjáb.' I do not believe the statement, and I see that the most violent partizans of the theory have now been compelled to relinquish it, for after the most stringent revision of the Amritsar Settlement 15,000 occupancy-tenants remain on the record, which is a conclusive admission of the existence of the tenure before the conquest. But suppose the statement to be true. Why should not the British Government, under the peculiar circumstances of the Panjáb, establish rights of occupancy in the tenants whom it found in the province at annexation? Who is it that has created in the Panjáb the rent of land and its value for sale or letting, which were practically unknown there under Native rule? It is partly the British Government by the peace and security which it has established—partly the cultivators by their industry. Why should the British Government not give some degree of protection to one large section of the class which, jointly with that Government, has produced all this wonderful prosperity? Why should it, on any principle of justice, be bound to place these tenant-cultivators suddenly at the mercy of any body who can make a claim to those faint, vague, and shifting proprietary rights which by general admission alone existed before the annexation?

Sir, the proposal deliberately made to us by one numerous and energetic section of the Panjáb officials is to confiscate, either immediately or after a short interval, the beneficial rights of hundreds of thousands of households, guaranteed as I have described, vested in the class I have described, and gained at the expense of nobody. But what are we to say of derivative rights which in 15 or 20 years have probably flowed from the original rights in the course of the ordinary transactions of life? As there has always been a doubt whether occupancy-tenures were alienable, they have probably not been parted with in any number, but money-lending is active in every corner of India, and undoubtedly these tenures have been the security, direct or indirect, for considerable advances of money. They may not have been expressly mortgaged, but I find from the papers of the Orissa Famine Commissioners that even in the most difficult times, an occupancy-tenant can obtain an advance when a tenant-at-will can get none. What is to become of the security for such advances? It is apparently to be destroyed together with the original rights.

Sir, I am bound to say—remembering always that I speak from an English lawyer's point of view, and subject to the reservation implied in my comparative ignorance of the necessary conditions of administration—I am bound to say that, when these proposals first became known to me, they struck me as really monstrous. Yet things *primâ facie* monstrous may turn out simple and natural, but we may at least expect that a strong defence will be made for them. What defence is made here? The chief, it may be said the only, reason assigned for such proposals is that mistakes were made at the first settlement, and that cultivators were recorded as having a right of occupancy, to whom the custom of the country did not attribute any such right. It will be inferred from what I have said that I decline to regard this as in any respect an answer to the tenants' claim. The true question is whether the title of the occupancy-ryots is not of such a character that it ought to prevail, even though it began in mistake,—nay, even though it began, like many of the Talukdárí tenures of Oudh, in simple violence. I consider, therefore, the allegation that mistakes were made as raising an immaterial issue. But as many estimable persons do seem to attach some degree of importance to the assertion, I may be permitted to enquire briefly on what foundation it rests. And here, Sir, let me say it was a piece of great good fortune for this Council that my Hon'ble friend, Sir R. Temple, joined us at the particular juncture in the history of this measure at which he took his seat. The impugners of the accuracy of the first settlement were very clamorous and positive; its defenders gave, it seemed to me,

but an uncertain sound. But my Hon'ble friend, who had an intimate connexion with this settlement—which, I believe, most of its present critics know only by tradition—who in the Central Provinces has had proceeding under his eye a settlement conducted on precisely the same principles, was able to assure us that the imputation of carelessness or empirical precipitation was absolutely groundless, and that as much pains were taken as with any other settlement of revenue. Your Excellency is further aware that since it became known in England that these charges were being made, the Government has received letters from gentlemen who were engaged in the settlement in high positions, and who indignantly repudiate the imputations directed against their carefulness and sagacity. I have read the papers most diligently, and I find the only error worth mentioning, which is charged against the original Settlement Officers, is that they took the state of the facts existing during the 12 years previous to annexation as proof of the state of the rights. Now, Sir, with a view to ascertaining in what degree the Settlement Officers were blameable for taking this course, permit me to read a passage from a Minute of the present Lieutenant Governor of the Panjáb, who, it must be recollected, is a very high authority on opinions and ideas in purely Native states of society:—'The state of things,' he says, 'existing in the Panjáb, for a long series of years preceding annexation, was such as almost to extinguish proprietary rights in land, or at all events to deprive them of mostly all their value. The people in consequence possessed very indistinct ideas in regard to those rights, so that the best security for a correct ascertainment of the rights and relations of the several classes connected with the land was wanting.' Other authorities who have joined in this controversy have made the same admission even more strongly, so much so that it may almost be inferred from their language that, under Sikh rule, there was no such thing as eviction, and no such thing as the rent of land. Nor is this last statement as incredible as it may seem, for it may well be that the Sikh government took so much from the cultivator in the form of Revenue, that nothing, or next to nothing, was left to him but the means of subsistence and cultivation, and consequently there was nothing, or next to nothing, which could go to the landlord in the form of Rent. But what was the problem before the first Settlement Officers? To discover whether tenants were occupancy-tenants or tenants-at-will—whether they could be evicted, and their rent enhanced at pleasure—and this discovery had to be made in reference to a state of society which included neither eviction nor rent. Really, Sir, the customary mode of doing that which was never done—the customary mode of dividing the non-existent—strike one as belonging to that class of questions on which it is best to decline giving a confident opinion. Why then, when the

conditions of enquiry were these, why should the Settlement Officers be condemned for preferring one of the best established principles of jurisprudence to an investigation of the 'very indistinct ideas' described by Sir D. Macleod. There is, in a memorandum recently sent up, a dictum of the Settlement Commissioner that 'the recognition of periods as tests of rights is the very mischief.' Well, Sir, the recognition of a period of time as the test of a right may in the Panjáb be called a mischief, but it is known to jurists as a prescription; and not only are prescriptions common in all systems of jurisprudence, but it so happens that the free use of prescriptions has been selected by jurists as the criterion for distinguishing good and civilized systems of law from those that are bad and barbarous. And the reason is notorious. The accumulated common sense of ages has shown that, even in societies which have very distinct ideas as to property, enquiries into rights which are unfrequently and intermittently exercised are, if carried far back, as nearly as possible worthless.

But, Sir, assuming that the adoption of the twelve year rule led to the recording of some rights which would not have been recorded if a different mode of investigation had been followed, let us see whether the officers engaged in the recent settlement had any advantage in prosecuting their enquiries over their predecessors of twenty years since. And first, Sir, I put aside the assumption which I regret to see occasionally made in the papers of superior sagacity and care in the present Settlement Officers. There is no evidence for the assumption, which at best is not very graceful; and it is probably safe to take it for granted that at both settlements all parties did their duty to the best of ther ability and up to the measure of their lights. But is it not evident, Sir, that from the very nature of the case, the present Settlement Officers were not only not at an advantage, but at a vast disadvantage, as compared with my Hon'ble friend, Sir R. Temple and his colleagues? I must again quote from the Lieutenant Governor the admission that, property having little or no value before the annexation, 'very indistinct ideas' prevailed on the subject of proprietary right. This then was the subject-matter of enquiry—a mass of 'very indistinct ideas' which were entertained on a particular subject twenty years ago. Then, Sir, the nature of these ideas had to be established by the oral testimony of very ignorant men. It is necessary, Sir, to put this clearly, for some of the papers appear to me to disclose a very curious misconception of the Settlement Officers. They seem to have supposed that what they had to enquire into was the present ideas of the people on the subject of property and tenancy. But that, Sir, cannot be. The true question was whether the first settlement of the Panjáb was at variance with local customs, and the business in hand was

to take evidence of those customs as they existed before the annexation. And as to these customs, or rather ideas as to customs admitted to have been 'very indistinct,' they had to accept the oral testimony of very ignorant witnesses, and, if possible, to make that testimony prevail against a written record made very shortly after annexation. Well, Sir, it is almost a proverb in India that oral testimony is of very little value. The strongest statement I have seen on the point fell from the eminent Native Judge who sits on the Bench of the High Court at Calcutta. Nor is it necessary to assign moral defects in the witness as the cause of this untrustworthiness. The truth is, Sir, that the power of answering questions intelligently is a fruit and result of the habit of interrogating yourself; and men who do not look into their ideas, who take outward facts as they find them, and remember nothing but their actual experience, cannot answer questions except as to the barest matters of fact. The only effect of interrogating them is either to reduce them to confusion, or to get any answers out of them which the questioner pleases. Now I will show presently what was the character of the questions put to the witnesses; at present I will only say that their testimony was oral, and it related to 'indistinct ideas' belonging to the past. But surely, Sir, in the Pánjáb as well as elsewhere, evidence grows weaker in proportion as it grows older, and therefore necessarily, though the mere fact of its relating to matters of old date, the evidence taken during the recent settlement operations was incalculably weaker than that taken immediately after annexation. But the age of the evidence adduced before them was by no means the heaviest disadvantage with which the present Settlement Officers had to struggle. Surely it must be evident that the motives to false testimony had vastly increased, at least on the part of one class. Property in land which had little or no value before the annexation, has now a very great and distinct value, and the real struggle obviously is whether, in the case of the occupancy-tenants, the new profits shall be divided between them and the landlords, or shall go wholly to the landlords. The position, therefore, of the two parties to this contention in the Settlement Courts was this: on the one side you had very ignorant men, asked very difficult questions as to indistinct ideas of old date. On the other, you had witnesses, a shade better educated, more thoroughly aware of the matter in hand, but under the strongest temptation to adapt their testimony to their interests.

Sir, there is much in the detail of the Panjáb settlement proceedings which relates to matters which are quite foreign to my experience. There are, however, certain peculiarities in the method of enquiry pursued, on which it is not presumptuous in me to form an opinion, and certainly those peculiarities

have not given me a favourable impression of the value of the investigation. I observe, for example, that in a great number of cases, the persons under examination, whether landlords, tenants, or witnesses, were asked whether a particular class had a Right to do a particular thing, and the point was frequently put for decision to the committees who acted as referees. I do not mean to say that the word right was invariably used, but the questions constantly implied the notion of a Right, or some shade of it. Now, everybody who has paid even a superficial attention to the subject is aware that there is no more ambiguous term than Right, and no idea less definite. I do not suppose that in the Oriental patois in which these questions were asked, the word is less equivocal than in the cultivated European languages, and yet in Europe it is only the strictest and severest jurists who speak of Rights with accuracy. *Primâ facie* when you ask whether a class had rights of a particular kind, you mean legal rights; but legal rights imply a regular administration of fixed laws, and there was confessedly no such administration under Sikh rule. Yet I find the Settlement Officers enquiring about rights of eviction or enhancement, without explaining (and apparently without being conscious of the need of explaining) whether the rights in question were of the nature of legal rights, or whether moral rights were meant, or whether what was intended was merely the physical power of the stronger to do what he pleased to the weaker. And these difficult and ambiguous questions—questions which in reality sometimes involved highly refined abstractions—questions which I do not hesitate to say that, even if I had been cognizant of the facts, I could not always myself have answered without fuller elucidation of their meaning—were put to ignorant and uneducated men, to men therefore who, like all ignorant men, are capable only of thinking in the concrete and in connection with actual facts, and were put moreover with reference to a state of facts which ceased to exist twenty years ago. Perhaps, Sir, it may be said that the rights about which enquiry was made were customary rights—rights arising under a Custom. But here, so far from having my ideas cleared, I find myself in greater difficulties than ever. For it appears to me that in the papers relating to the recent Panjáb settlement, the word 'custom' is used in a sense certainly unknown to jurisprudence, and I believe also to popular usage. A custom is constantly spoken of, as if it were independent of that which is generally, if not universally, considered to be the foundation of a custom. According to the understanding of lawyers, and I should have said according to the understanding of all men, barbarous or civilized, the foundation of a Custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred. But the writers of these papers perpetually talk of customs of eviction, of

enhancement, or of rack-rent, and in the same breath admit the non-existence of any practice of the kind alleged. Some broadly state that there never was an instance of the customary right being exercised; nearly all allow that its exercise was as rare as possible, nor do they attempt to show that the rare instances of its exercise were not simple acts of violence. Indeed, a good deal of the papers is taken up with conjectural explanations of the reasons why the custom was not acted upon, or, as I should venture to put it, why there was in point of fact no custom at all. A curious illustration of these (to me) remarkable ideas about customs occurs in the suggestions of the gentlemen who lately assembled at Murree for the revision of the Bill as settled by the Select Committee. The Bill contained, and still contains, a provision allowing the presumption of occupancy right, created by entry in the settlement record, to be rebutted by showing that 'tenants of the same class in the same or adjacent villages have ordinarily been ejected at the will of the landlord.' The so-called Murree Committee proposed to reject this provision, and even the more moderate section proposed to substitute another to the effect that rebuttal should turn upon proof that the entry was opposed to a custom locally recognized and acted upon. Obviously they considered that it would be impossible to show that tenants were ordinarily evicted at will by their landlords. As a mere matter of curiosity, I should really like to see the evidence which would be tendered to a court of justice for the purpose of establishing a custom, in the face of an admission that instances of the exercise of the alleged customary right had never occurred or were extraordinary occurrences. Sir, I must say that, on this ground alone, the claim preferred for the recent settlement to be superior to all former settlements, must be held to fail. I do not pretend to have an exhaustive acquaintance with the voluminous literature of Indian revenue settlements; but I know something of it, and I think I can see that the older investigators of Native customs proceeded on a mode of enquiry which is perfectly intelligible. They enquired for the most part into practices and into facts, not into vague opinions. They inferred a rule from the facts they believed themselves to have discovered, and then they stereotyped it. No doubt they may have made mistakes. They may have generalized too rapidly, may have neglected local exceptions, and may have made a usage universal which was only general or even occasional. But at all events their undertaking was perfectly practicable, whereas I doubt whether the method followed in the recent settlement enquiries was not fatal to any trustworthy result.

That, Sir, however, is not my case. I say that even if these beneficial rights of occupancy were really planted in the Panjáb by the British Govern-

ment, they have grown up and borne fruit under its shelter, and that it is not for its honour or interest to give them up to ruthless devastation. Nor is it solely for the interest of the British Government that they should be protected—it is for the interest of everybody who has a vested right in property, whether moveable or immoveable, and whatever be the form it may take among the innumerable forms which proprietary right assumes in India. There could be no more dangerous precedent than the wholesale obliteration by the Government of vested rights which the Government created fifteen or twenty years ago, merely on the ground that the Government made a mistake. I know, indeed, that it is a point against me that this view does not seem to be taken by the Lieutenant Governor of the Panjáb, whose name is not to be mentioned without respect. But I cannot help thinking that Sir Donald Macleod reconciles these proceedings with his sense of justice and expediency by his belief that a system might be devised of buying out the occupancy-tenants on the principle of equitable compensation. Now, Sir, I have always thought that over limited areas of land in India, particularly in the vicinity of great cities, where capital is abundant, and where great cultivation is possible, a system of buying out occupancy-rights for fair value might have much to recommend it, and might solve many embarrassing difficulties. But I am satisfied that, for a whole province like the Panjáb, such a system would be quite impracticable, and I say this the more confidently, because the plan has evidently been suggested by what seems to me an erroneous view of the functions of the English Copyhold Commissioners. It has been truly said, in the first place, that the office of the Copyhold Commission is to get rid not of the class corresponding to the tenants, but of the class corresponding to the landlords. It is the lord of the manor who is bought out, not the copyholder. Thus it is the few who receive compensation from the many, not the many from the few. Moreover, the compensation proper to be given for the heriots and other manorial dues is calculable with comparative ease, and scarcely amounts in any whole year a very serious aggregate sum. Still, with all these facilities, the Copyhold Commission is notoriously cumbrous and dilatory in its action. A body of functionaries, however, charged with arranging compensation for all the tenants affected by the recent settlement proceedings, would have a herculean task before it. The rights to be paid for hardly admit of estimation, and the mass of those rights is enormous. Although, too, the Panjáb has advanced so extraordinarily in prosperity, it may be doubted whether it contains the means for the pecuniary compensation which would be required; and, indeed, I venture to think that if an attempt were made over territory so vast as that comprised in a whole Indian province to buy out occupancy-rights on equitable principles, no system would be possible, except that

recently tried in Russia—a system of dividing the land between landlord and tenant, which would probably be infinitely more unpopular with the proprietary class than the present system of dividing the profits.

Sir, I have stated my doubts as to this Bill as strongly as possible, chiefly because, as I said before, I do not think that side of the question has had fair play. But I do not in the least wish to withdraw from the compromise which the Bill embodies. The article of that compromise which involves the greatest concession on the part of those who agree with me, is the erasure from the settlement record of all the tenants, once registered as having occupancy-rights, who have admitted before the present Settlement Officers that they can be evicted by their landlords. I will not enquire too closely or curiously whether the admission was intelligently given, whether the tenant was or was not thinking of the moral right of his landlord, or of his power as the stronger man. Every compromise must involve concession, and if there is any of these rights which it is equitable to destroy, they are those which the owner has in some sense or other disclaimed. One point, and one only, remains for me to notice. It may perhaps appear at first sight a merely legal point, but it is in reality one of the most far-reaching importance. Sir, what is the proper construction to be put on certain provisions of Regulation VII of 1822? On the annexation of a new country to the British Indian Empire, two operations are carried through,—the revenue payable to Government is settled, and a Record of Rights in land, which has hitherto been considered the surest guarantee of the stability of those rights, is framed by the Settlement Officers. When the period for which the revenue has been settled expires, everybody agrees that it can be re-settled according to the increased or diminished profits of the land. But can the Record of Rights be re-cast by the Settlement Officers at new settlements, not on complaint, but officiously and of their own motion? This is the claim of the Panjáb Settlement Officers, which I deny on grounds both of reason and of expediency. I admit that the language of the old Regulation is incautious. The truth is, these older enactments were not intended to stand the tests now applied to them; if they were carried out in a sense not intended by their framers, an executive order, which in fact emanated from an authority identical in point of *personnel* with the Legislature, corrected the error. But, I believe, chiefly because the authors of the Regulation were great men and men of strong sense, that they intended nothing so preposterous as a periodical, wholesale, officious revision of the Record. Moreover, it is only the 'spirit' of the Regulations which has been extended to the Panjáb, and whatever be the exact meaning of the distinction, it is assuredly the letter, and not the spirit, of the Regulation which countenances these late proceedings. For

just see what is claimed. The land in India is the foundation of society, and it is asserted that once every ten, fifteen, or twenty years a number of gentlemen, many of whom it is surely not disrespectful to call young gentlemen, may go in and reconstruct the very basis of society. I have sometimes heard and seen the advocacy of tenant-right called socialistic, but what Communist in his wildest dreams ever imagined a wholesale re-adjustment of rights in land once every fifteen years? There is not, moreover, the smallest security for the principles on which such re-adjustment would take place. If an ordinary contingency of Indian life had happened, and certain able and energetic officials had fallen ill during the late settlement, I am not sure that it would have concluded on the principles on which it began; and, for all I know, if these pretensions be allowed, and if the whirligig of Indian opinion goes round as rapidly as it has done in my time, we may have tenant-right introduced universally fifteen years hence, possibly in imitation of Irish legislation which might have occurred in the interval. There is no question, Sir, I suppose, that the extraordinary burst of prosperity which invariably follows the annexation of a new State to British India is chiefly owing to the stability which we give to property—more to that perhaps than to the protection we give to life and limb. If, however, these novel views as to the unlimited supremacy of Government officers over property prevail, I am not sure we shall not by such experiments arrest the progress of the country in civilization even more than did the dispossessed Native ruler by his tyranny and oppression."

The Hon'ble Mr. TAYLOR.—"Mr. Maine has so entirely expressed the views which I myself entertain on the question of tenant-right in the Panjáb, and as to the necessity for legislation at the present time, that it is quite unnecessary for me to attempt to follow my Hon'ble friend over the same ground. I desire only to explain to the Council very briefly why I concur in the general recommendations of the Select Committee in regard to this Bill, and why I object to the proposed clause in section 19 empowering the landlord by tendering compensation to eject a tenant with a right of occupancy.

I may begin by saying that I regard a tenant with the right of occupancy, acquired by prescription or in the manner which is declared in this Bill to constitute such right in the Panjáb, as a co-proprietor of the land in his occupation, who cannot be ousted on any pretence whatever so long as he pays the rent which is properly chargeable thereon. Such a man is not to be confounded with a tenant-at-will, a term which is unknown to the old Regulations. Tenants-at-will are for the most part the servants and labourers of the occupancy peasant-proprietary, usually of a different caste, and whose rights are governed

by prescription or custom peculiar to each part of India. It may perhaps be said, as Sir Richard Temple did in fact say in Committee, that my notion of the proper status of an occupancy-ryot is derived from the state of things with which I am familiar in the Southern Presidency, where the ryots are real peasant-proprietors, absolute owners of the land they occupy or cultivate. This opinion of my Hon'ble friend is no doubt true to some extent. I should, indeed, be glad to think that the peasant-proprietary of every part of the vast Bengal Presidency were in a fair way of being raised to the position which is fortunately occupied by the ryots to the south and west of India, whom I regard, not as the pauperised tenantry which they are described to be by persons very imperfectly informed, but as the true landlord class which the ryotwar system, when properly administered, is calculated to produce.

We have to deal, however, with matters as we find them in the particular province to which our legislation relates, and it has certainly been my wish in common, I feel sure, with that of my colleagues in the Committee, that the principles of this Bill should be as closely as possible adapted to the circumstances known to exist in the Panjáb. I believe that this measure, which, after infinite trouble and lengthened discussions with those most intimately acquainted with the wants of the province, has been devised as a compromise between two extreme views, will, in the main, provide a satisfactory settlement of the long pending question.

I hold in my hand a paper on the subject of this Bill written at my request by Mr. Forsyth, the able and experienced Commissioner of the Jalandhar Division, who is distinguished by the moderation of his views on the tenant-right question. He very justly remarks that 'the truth in this, as in most controversies, lies in the mean between two extremes,' and it is this mean which it has been the object of the Bill to hit. After the picture which has been drawn by Mr. Maine of the hapless condition of the many thousands of the occupancy peasantry who have been degraded from their former rights by the proceedings of the Settlement Officers, the Council will hear with satisfaction from one who speaks from personal knowledge, that 'it is a great mistake to suppose the Panjáb generally to be in a state of agitation regarding the tenant-right question. Such agitation is confined to the Amritsar and Lahore Divisions, where a general up-heaving or disturbance of the rights of tenants has been made. In many districts the landlords themselves have come forward to propose that their tenants should be protected.' After stating as an undoubted fact that many mistakes were made in the earlier settlements, and describing why this was unavoidably

so, Mr. Forsyth goes on to say that as years passed by, 'the people, ignorant and careless, continued in their old ways, taking no heed, and probably unconscious of the erroneous entries. But now, as lapse of time gives a validity to titles otherwise untenable' (and he might have added, as land has increased in value), 'we are frequently assailed by petitions to correct alleged errors.

'For the correction of such errors, some steps were necessary, but Mr. Prinsep went too far in assuming that *all* entries in the records required to be submitted to fresh enquiry.

'It was remarked by a Panjáb proprietor that there was no stability in our principle, for twenty years' tenants have been recognised as having certain rights; now we are told Government has changed its policy, and they are to have no rights. Perhaps in another twenty years, another change of policy may take place.

'The proposed Bill provides a sufficient remedy in allowing manifest errors to be brought before a regular tribunal.'

Mr. Forsyth then proceeds to comment on several of the details of the Bill, and I must admit that he takes a somewhat lower view of the status of an occupancy-ryot than that which I myself hold. I think, however, that the Council will consider his testimony, as given in the extracts I have quoted, to be very valuable and generally favourable to the measure now under discussion.

There is one fact of which every year's experience and observation only strengthens my conviction, which is that, however much local circumstances, habits, customs, and even tenures and interests in land may vary in different parts of the country, the normal condition of the cultivating peasantry in reference to the land is essentially the same in every province of India. Their position is that of hereditary occupiers at customary fixed rates of rent, but without a transferable interest in the soil. This rent is payable either to the Government direct, or to a middle man, a superior zamíndár, or proprietor with certain well understood rights and privileges which are recognised by the Government. Now, one of the main objects of this Bill, as it was the object of all similar enactments like the Oudh Bill and the Bengal Act X of 1859, is to confirm and strengthen this tenant-right of occupancy, not by curtailing the proper rights and privileges of the superior landlord, but by giving to the tenant such security of tenure as will enable him with confidence to employ his capital and his labour upon the improvement of his land. What is chiefly wanted in order to effect this, is permanence of assessment and the power of disposing of his property as he pleases. Both these advantages are confirmed to the peasant-occupant under the present Bill. He remains in undisturbed possession of his land so long as he pays the rent, or at least he will so remain if the amendment of my Hon'ble

friend, Mr. Strachey, be adopted, and he may alienate it to whom he pleases after first offering it to his landlord at the market price. But if to these conditions of his tenure you attach the penalty of ejection from the land at the will of the landlord or proprietor, on payment of such compensation calculated on the annual net profits as a Court may think fit, in order, I suppose, that the landlord may put in a relative of his own or a stranger who offers a higher rent, you completely neutralize the benefit intended to be conferred upon the occupancy-tenant; what you give with one hand you take away with the other; you reduce his tenure in fact to that of a mere tenant-at-will, and deprive him of the right of doing what he pleases with his own; you at once depreciate the value of his property, for the occupancy-right *is* a property in the strictest sense of the term, and you destroy the feeling of secure possession which it is so desirable to encourage. I consider this to be a move in the wrong direction. If any one is to be bought out, I would buy out the so-called landlord rather than the tenant. According to my view, the better policy in the interests of all parties is to convert the permanent holder of the land, who is in fact a co-proprietor, into the actual owner of the property on the sole condition of the regular payment of his rent. The hereditary cultivator is the real man of progress; as a rule, it is he and no other who puts his labour and his capital into the land, and it is upon his industry and frugality that all agricultural improvement depends. It is clearly, therefore, to the advantage of the landlord to deal with him as the permanent occupant, and thus give him a direct incentive to improve the property.

The only restriction which by the common law and usage of India has hitherto been imposed upon the co-proprietary or occupancy-right of the hereditary cultivator is the prohibition or disability to alienate without the consent of the Government or the landlord. In the south and west of India, where the ryots hold direct from the Government, this restriction has been removed and the cultivator's interest in the soil has, under our permissive acquiescence, been developed into a transferable right of property. The Bill proposes to confer this right, though qualified by the landlord's right of pre-emption. This is a valuable concession so far as it goes, but I should prefer to give the tenant the power of purchasing out and out this transferable right, once for all, for a fair equivalent. On this subject I beg to refer to a Minute which I wrote several years ago when the question of the relative rights of zamíndárs and ryots in Lower Bengal was under discussion. I then said, when referring to several points which affected the condition of landed property under Lord Cornwallis' Permanent Settlement,—'another point is the advantage that would accrue by converting into a saleable property the bare hereditary right of occupancy

enjoyed by the ryots of Bengal. The earlier Regulations and Act X of 1859, in providing ejectment for non-payment of rent, do not regard the right of occupancy as a saleable property, and this no doubt is strictly correct. But this restriction upon the transfer or sale of the ryot's rights is worth little or nothing to the zamíndár so long as the ryot can transmit the occupancy to his heirs and relations without limit; and the removal of this restriction by adding very materially to the value of the land would indirectly benefit both parties. It seems to me, therefore, to be within the province of the Legislature to provide by law for the compulsory enfranchisement of the restricted tenure of the occupancy-ryots by the payment to the zamíndár, say, of two and a half times the annual net profit enjoyed by the ryot, which would be about equal to one year's full rent of the land.' This of course is a matter for calculation, but as regards lands paying the full rent, the value to the ryot is the surplus after rent and all expenses of tillage are defrayed, which on the average cannot amount to much more than half the rent. 'On payment of this fine once for all, irrespective of the ordinary yearly rent, the ryots would acquire a transferable property in the land occupied by them.' I added that such a measure would have a very beneficial effect upon the present imperfect condition of landed property in Bengal. Probably, however, for the present as regards the Panjáb at least, the Bill goes far enough; and if the one flaw to which I have referred be removed, I for one shall be content if its provisions should become law."

The Hon'ble Mr. STRACHEY.—" Sir, I feel that the time has past in which it was possible to hope for a more satisfactory settlement than this Bill affords of the difficulties that have arisen in regard to these questions connected with the tenure of land in the Panjáb. But while I admit this, and while I express my concurrence with those who desire that this Bill may now pass into law, I wish to state the opinions which I hold regarding the circumstances that have rendered legislation necessary. This necessity, as my Hon'ble friend, Mr. Maine, has just shown, has been forced upon us by the proceedings which have been lately taken by the officers of the Settlement Department in the Panjáb. In my opinion regarding those proceedings, I agree so entirely with everything that Mr. Maine has said, and I think his statement of the facts, and the conclusions which he has drawn from those facts, so complete and so unanswerably true, that I should have felt inclined to remain silent during this part of the discussion on the Bill, did I not feel it to be my duty, as a Member of this Council, not only to assist in repairing by legislation, so far as this may now be practicable, the actual mischief that has been done, and in preventing such mischief for the future; but not to lose this opportunity of publicly declaring my belief that those

proceedings have neither been right in principle nor practically expedient, but, on the contrary, that their tendency has been injurious to the most important interests of the country.

The principal questions which have been under discussion are those connected with rights of occupancy in the land, and these are questions on which, as we all know, Englishmen hold views of the most opposite and irreconcilable character.

Notwithstanding these differences, there has been, up to a certain point, a remarkable unanimity in regard to the facts from which our conclusions are to be drawn. The principal of these facts are those connected with the conditions under which land was ordinarily held in the Panjáb before the British conquest.

My Hon'ble friend, Mr. Maine, has read to the Council the opinion of His Honor the Lieutenant Governor of the Panjáb, to the effect that for a long series of years before the annexation of the Panjáb, proprietary rights in land had become almost extinguished, or had been deprived of nearly all their value. The Financial Commissioner has written to the same effect. He states that, although there were numerous co-existing interests in the soil, 'sixteen years ago there was neither landlord nor tenant in the Panjáb, according to our acceptation of those terms.' And in another place he writes as follows:—

"The terms of landlord and tenant, as familiar to us in England, are likely to mislead when applied to the classes we have to deal in the Panjáb, whose relations to each other we are now called upon to determine. If His Honour the Lieutenant Governor will refer to the several settlement reports quoted by Mr. Prinsep, he will observe how very general the testimony is that, on the advent of British rule, the so-called privileged tenants were found occupying a status so similar in all respects to that of proprietors that in some cases it was difficult to distinguish between them. The Sikh Government had not, it is true, by any formal proclamation, such as was issued recently by Lord Canning in Oudh, confiscated the rights of proprietary classes; but by settled policy, persistently pursued for years, it had effectually confiscated all such rights, and during this time the burden upon the land was so heavy that the obligation was not on the part of the proprietor who gave the land, but on the part of the man who took the land on the condition of meeting the Government demand upon it. * * This and other settlement reports, and the experience of every officer who has enquired into the tenures of the Panjáb, will bear me out in saying that, while, on the one hand, property in the European sense of the term has been created by the British Government in the Panjáb, on the other hand there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted like any other heritable property from father to son, and for which either no payment was

made to the so-called proprietor, or if payment was made, it was of the nature of the dues for lands of copyhold and customary tenure in England to the lords of manors, rather than for those paid by tenants to proprietors.'

It would be easy to multiply quotations to show that the highest authorities in the Panjáb have concurred in these opinions regarding the tenure of land under the Sikh Government.

Under such a condition of things as this, it is clear that neither proprietors nor tenants practically possessed any rights in the land at all. And, indeed, as Mr. Maine has observed, it is idle to talk of rights of property in a state of society in which there was no law, and no administration of justice, and no possibility of enforcing any claim, however equitable it might be. This much seems to me to be certain that, although the cultivator of the soil had no rights capable of being maintained against the will of any one more powerful than himself, there was no part of India in which rights of private property in land were weaker than they were in the Panjáb when we took possession of the country. There can hardly be a better sign of this than the fact stated by Mr. Prinsep, and to which Mr. Maine has referred that in one division, out of 60,000 tenants recorded at the settlement as having rights of occupancy, no less than 25,000 were found to have paid under the Sikh Government no rent to the nominal proprietors.

A great deal has been said in condemnation of the settlements that were made after the annexation of the Panjáb. I am far from denying that many mistakes may have been made, and I fully admit that those mistakes ought to be corrected so far as this, after the lapse of so many years, is now possible without leading to greater hardship and injustice than that for which it is desired to apply a remedy. But notwithstanding such mistakes, I believe, from all the information that I have been able to obtain, that no more careful and better settlements have, all things considered, ever been made in India than those which were made in the Panjáb. I think that the reports of those settlements show that they were made in all essential respects on sound principles, and, I will add, on principles far sounder than those in accordance with which it has been proposed to alter them. These settlements were based on the rules which had been laid down and acted upon for many years in the North-Western Provinces. It was the object of the Settlement Officers to ascertain the existing customs, under which land had actually been held, and to secure to every one the advantages which he had actually enjoyed, and to declare judicially that all classes interested in the land should thenceforward hold by right the benefits which they had previously possessed under a most uncertain tenure.

Such an undertaking was necessarily a most difficult one, and it was impossible that errors should not be committed in recognizing and recording, through the length and breadth of a great country, rights in the land which were often of the obscurest kind, and which were for the first time recognized as rights at all. If, as Mr. Maine has said, it was difficult shortly after the occupation of the Panjáb, to ascertain the nature of the advantages which, under the Sikh Government, had been derived from the land by parties possessing conflicting interests, how much more difficult, not to say impossible, must this be now, when so many years have elapsed, when the condition of the country has become absolutely changed, and the people have learned the value of the rights which have been bestowed upon them. I believe that the most careful investigation that can now be made into the condition of things existing in any given estate, before the annexation of the Panjáb, must, from the nature of the case, be almost invariably worth much less than the most cursory investigation made under the orders of the Settlement Officer fifteen or twenty years ago. I decline to believe in the superiority of the records of rights that have been lately made in the Panjáb over those that were made at the first settlement, under much more favourable circumstances, by officers of not less zeal and ability than the officers of the Settlement Department at the present time.

The truth, I believe, is that this desire to alter the arrangements of the old settlements has had its origin in that strong belief which is ingrained in the minds of so many Englishmen that the rights over the land of the man who happens to be called the landlord, have necessarily something of a peculiar and an almost sacred character. It is seen that the limitation of the demands of the Government upon the land, the protection given to property by our laws, and all the other causes which have made the country tranquil, and rich and prosperous, have given to the land a value which it did not possess before, and that, in fact, a new property in the land has been created. It seems to many Englishmen the plainest justice that this new and valuable property should be deemed to belong to the so-called proprietors of the land, and they think it the extremest injustice that a large proportion of it should, in consequence of the system followed at the first settlement, go not to the landlords, but to the actual cultivators of the soil.

It seems, Sir, to me that such feelings are in the Panjáb altogether out of place. If the settlement proceedings had taken away from the so-called proprietors anything which they had formerly possessed, I should be among the first to say that they had been unjustly treated, and that they deserved

redress. But I totally fail to see that any injustice was committed. I am now speaking generally. I do not deny that injustice may have been done in particular cases, and, as I have already said, where this has happened a remedy should, if possible, be applied. Speaking generally, I see no reason to doubt that the settlement in the Panjáb secured to the landlords everything to which they were equitably entitled. Justice would have been done if there had been secured to them no greater profit from the land than that which they had actually enjoyed before, but in fact much more than this was given to them. When it was found, as it was actually found in many thousands of cases, that tenants so-called had been from time immemorial in possession of their holdings, and that they had never paid any rent to the so-called landlords, there seemed to the settlement authorities no reason why the position of such men should be altered, or why, because a man happened to be called by a name which people chose to translate by the English term proprietor, he should receive, at the expense of other people, advantages which he had never received before.

And it is important to remember that, in making the first settlement in the Panjáb, no great political questions were involved, similar to those that have been involved in some other parts of India, and especially in Oudh—a country of great and influential landholders. Such landholders in the Panjáb are, I believe—and if I am wrong, your Excellency will, I trust, correct me—comparatively speaking, very few in number. The Panjáb is and always has been a country of peasant-proprietors, occupying their own small holdings: not a country of great landlords. Under these circumstances, it would have been meaningless to have adopted in the Panjáb what has been called an aristocratic policy, such as that adopted by Lord Canning in Oudh, with the avowed object of enlisting in the support of our Government the natural leaders of the people. The settlement in the Panjáb was made in accordance with the system which had been adopted for many years in the North-Western Provinces. While I do not believe that the just rights of landlords were set aside, it must be allowed that the main tendency of that system was towards the improvement of the position of the class of peasant-proprietors, and of the tenants having permanent and hereditary rights of occupancy in the land. That system assumed that it was desirable, for the agricultural prosperity of the country, that the people who actually occupy and cultivate the land should have a permanent interest in it; and that so long as they fulfil the obligations under which they hold, they should be protected against arbitrary ejectment, and against unreasonable enhancement of rent. I believe, for my part, that these principles are right, and whether they are universally applicable or not,

they were the only principles that were applicable in the Panjáb. I believe that there is no country in the world where the notion of absolute property in land is more foreign to the people than it is in India; and I think that these voluminous papers which have been laid before the Council, show that there is no part of India in which this idea of absolute property in land had less existence than it had under the Native Government of the Panjáb. If the Settlement Officers in the Panjáb erred in giving too great an amount of protection to the actual occupiers of the soil, I believe that they at least erred in the right direction. I am satisfied that it is true that the class of small proprietors cultivating their own land, and the class of tenants with a permanent interest in their holdings, are the classes from which almost all real improvement of the land in India is derived, and that, without security of tenure and some limitation of rent, it is vain to expect agricultural progress. England is the only country in the civilized world in which any other doctrines are seriously held; but when we see what is going on in regard to the position of the occupiers of land in Ireland, it seems hardly possible to doubt that great changes in the tenure of land may not be far distant even in our own country.

I believe that these principles would be true even if Indian landlords were improvers: but in point of fact they are not improvers. Nor does Indian agriculture require for its success the investment in the land of the money of capitalist landlords. That success depends far more on the careful and unremitting attention to all the operations of husbandry given by men who feel a direct and personal interest in their work, and who know that they will themselves reap the benefits of their own labour. It is the too common custom of Englishmen to doubt the wisdom of any systems which differ from those of their own country. Even in England, where circumstances are altogether peculiar, and where the tenure of land is, to the last degree, exceptional, I believe that the principles which I advocate are generally true. In all other countries, of which I know anything, and especially in India, I believe them to be true without qualification. However this may be, I cannot understand how any one who has seen, as I have seen myself, the admirable results which have been arrived at in many of the civilized countries of Europe by peasant-proprietors and tenants possessing permanent interests in the land, should doubt the future capabilities of a similar system of agriculture in India.

Holding these views, I think it matter for much regret that rights, the recognition of which at the settlement was, as I believe, in accordance both with the feelings of the people and with sound policy, should have been so rudely shaken by the proceedings which have made present legislation necessary.

In regard to the absolute illegality of those proceedings, my Hon'ble friend, Mr. Maine, has said everything which can be said, and I can add nothing to the well-deserved reprobation which he has given to them. It seems to me truly extraordinary that so monstrous an invasion of the rights of property and of common justice, as that which Mr. Maine has described to us, should have taken place in a British province. Whatever may have been the original foundation of these rights, they had been enjoyed uninterruptedly, under the guarantee of our laws, ever since the British conquest, and it might have been supposed that they were as secure as any other rights of property in the land. I cannot profess to think that this Bill affords a complete remedy for the injustice that has been done. But I feel that nothing better can now be hoped for, and therefore, with some exceptions, which I shall find occasion presently to notice, I am prepared to accept it."

His Excellency the COMMANDER-IN-CHIEF said that the Council had now been addressed by four Members of the Committee, and His Excellency the President would bear him out in saying that those Hon'ble Members had shown very clearly that they all belonged to the same school of thought in the matter under consideration. The Hon'ble Mr. Taylor wanted apparently to evict all the landlords, and this perhaps not only in the Panjáb, but throughout India. In short, Mr. Taylor would provide for improving the landlord out of his property altogether. The Hon'ble Mr. Maine had, indeed, gone far to shake the value of the report of the Committee, for he had told us that the evidence on which the Committee had come to its conclusions was worthless. The Hon'ble Mr. Strachey went even beyond Mr. Taylor in his animosity towards a landlord or proprietor's interest. Quoting his experience of the Continent, he would have us believe that English institutions, so far as regarded the system on which land was held and cultivated, and property generally upheld, to which we were in the habit of attributing the stability of British institutions, were false and wrongful. He would forbid us to contemplate this great exemplar of inviolability of property, and he would have us believe that it was all a fatal mistake. Mr. Strachey referred to the institution of a peasant-proprietary on the continent of Europe as an instance of the greatest political and social benefit; but it was well known that the practical wisdom of that institution was questioned by political economists and social politicians, at least as numerous and authoritative as those by whom it was upheld. HIS EXCELLENCY did not wish to make an opposition speech, but he confessed he saw the gravest cause for apprehending dangerous results from the present measure, unless it were greatly modified. He fully acknowledged the necessity of legislation, and of thus resolving doubts which had assumed a somewhat serious form. It was impossible to listen to the facts brought for-

ward by Mr. Maine, or to look at the figures which appeared in the papers which had been laid before them, without coming to the conclusion that the Government of the Panjáb, whether impelled by causes beyond its control or influenced by its subordinate officers, had arrived at a point where legislation was absolutely forced upon us in order to prevent the worst evils occurring. When making this assertion, His Excellency begged it might be understood that he imputed blame to no one. He well knew the exigencies or events which at times compelled a Government to move, or to allow a movement, almost against its will, and as for the subordinate officers, they of course simply acted with the full cognizance of their Government.

His Hon'ble friends, in their anxiety to plead the cause of the occupancy ryots; had treated the Settlement Officers with somewhat scant courtesy. He, the Commander-in-Chief, had the honour of knowing some of these gentlemen; he had read their copious and exhaustive papers which had been circulated from time to time, and he was bound to say that the language used by the Hon'ble Members to whom he referred was not such as to encourage officers of Government in a very important part of their duty, viz., not to conceal opinions which they might think it their right to lay before their superiors, which was intimately bound up with the peace and content of the country, and which was the result of the most careful investigation and profound reflection.

If we examined these papers carefully, it would be found that the weight of evidence showed that during the Sikh rule, the right of occupancy recognised in the Bill had no existence whatever, though practically ryots were not evicted, owing, doubtless, to their utility to their landlords. The Hon'ble Mr. Maine had dwelt on the disorder and anarchy which prevailed in the Panjáb before our annexation of that province, and he proceeded to quote the Lieutenant Governor on his side, and to endeavour to make it appear that Sir Donald Macleod coincided in the opinion that, owing to that state of anarchy, there was no possibility of arriving at the conclusion that any right, or shadow of right, as regards the land, existed in the Panjáb under the Sikh rule. But what did Sir Donald Macleod really say? He would read the 23rd paragraph of Sir Donald Macleod's Minute of February 10th:—

"It has been urged by some that proprietary rights have acquired reality and value solely by the action of our Government, and that we have the right to dispose, as we think best, of what we have thus created. But I do not believe we can thus deal with rights in land without injustice and imminent danger. If any suppose that proprietary rights in land, however depressed or kept in abeyance, have ceased to be recognized and tenaciously cherished, I would refer them to the third part of Mr. Prinsep's printed papers, where, at the eighth and following pages, he goes pretty fully into this question. It was pointed out by Lord Metcalfe

many years ago, in a passage which has been often quoted, how, after one or two generations had been driven out of a village in India by violence or oppression, succeeding generations would return on the first available opportunity to resume possession, each family occupying the precise plot vacated by its sires; and we may rest assured that there is nothing in regard to which it is more imperative on a Foreign Government desiring peace, prosperity, and permanence, to show the utmost consideration and tenderness than proprietary rights in land."

That was the opinion of the Lieutenant Governor, as was seen in the quotation, and it was sanctioned by the great authority of Lord Metcalfe.

There was another authority even greater than Lord Metcalfe—Mountstuart Elphinstone. He, in one of the earlier chapters of his History, called the village community which was found everywhere in India on which Indian Native society was universally based "the indestructible atom of civilization." This being so, were we to be told, because anarchy and violence prevailed for thirty or forty or even for a hundred years in the Panjáb, that no rights of property existed there? That, because we failed on annexation to recognise the exact status of proprietors, it was therefore impossible to ascertain and confirm their rights? He (the COMMANDER-IN-CHIEF) ventured to say that any one with the smallest practical experience of any other part of India would reject with astonishment the proposition. He well recollected that in the Bombay Presidency, certain tenures became the subject of legislation. There was the Mírásí tenure, which no doubt would be held by Mr. Taylor to be of no importance, but which nearly every one else familiar with Southern and Western India, would describe as being considered of the utmost importance by those affected by it, a tenure which especially applied to lands held by absolute hereditary proprietorship under certain conditions. Sir George Clerk was always particularly strong on this point, and absolutely declined to permit the weakening or invasion of such tenures and the rights belonging to them. Then there were the Khots in some of the Mahratta Provinces. They descended from officers who had exercised certain hereditary duties, and for them a law was especially passed by the local legislature. Again, for the neighbourhood of Kattyawár we had legislated for the assistance of hereditary rights, and the perpetuation of the families enjoying them. That country and the districts in which the Mírásídárs and Khots to whom he had referred were found had been disturbed by anarchy and civil war quite as much as the Panjáb. The evidence in favour of the existence in every part of India of rights aristocratic and territorial never, so far as he knew, used to be questioned till the school of Mr. Bird and Mr. Thomason came to be in the ascendant—a school which, as was well known, had been always hostile to the proprietors, and had been triumphant in the North-Western Provinces. The permanent settlement of Bengal had, on the contrary,

been founded on a notion of rights which were now declared to have no existence. We were now in the hands of a school different from that which ruled British India, and which, at the end of the last and during the early part of the present century, laid the foundations of the system existing in Bengal Proper at the present day.

He, Sir WILLIAM MANSFIELD, did not on this occasion offer an opinion either of approval or disapproval of that system. He merely wished to show how different had been the views prevalent in the early part of the century from those which had now become fashionable, and that the notion of the difficulty of ascertaining rights of property was a new one.

He repeated that he did not wish to make an opposition speech. He would therefore now content himself with laying down this proposition,—that while the Legislature determines not to invalidate the rights of the ryot, as amended after the annexation of the Panjáb, it ought to take care not to add to those rights. Now, it seemed to him that the present Bill gave occupancy-ryots two most important privileges which were never contemplated by the original framer of the Bill, and which had not been recommended by the Lieutenant Governor. First, the Bill in declaring by section 36 that a right of occupancy should devolve on the tenant's male lineal descendants, and failing them on his male collateral relatives, would, HIS EXCELLENCY apprehended, when taken in conjunction with the definitions contained in section 3, be held to confer the power of creating, by adoption, an heir to a right of occupancy which would otherwise have merged for the benefit of the proprietor. This right of adoption had caused so much trouble in dealing with larger affairs that he could not understand why it should be introduced so as to create similar difficulties in smaller but infinitely more numèrous transactions. In any case, it was the creation of a new right for the benefit of the tenant and to the disadvantage of the proprietor.

HIS EXCELLENCY spoke with diffidence on a matter relating both to law and to local custom, but surely the provisions of section 34 conferred an enormous and a novel advantage on occupants. If we looked to the Blue Book, we found that Mr. Leslie Saunders was strongly against the existence of any right of alienation such as that section proposed to confer on the ryot. Mr. Saunders said,—

"I believe the rule allowing, where exchange of land has occurred, occupancy still to be considered as continuous occupancy, to be entirely opposed to what has hitherto been considered the custom of the country, for in hundreds of cases I have myself investigated I have invariably found this incident to be admitted by the tenants as one of the main proofs of their not having

right of occupancy. Such exchange of fields before annexation may be deemed by Courts voluntary, because no tenant would have been upheld in such opposition to the will of the land-owner."

Then Mr. Forsyth,—

"I have not given my assent to clause 23 (regarding right of transfer by tenants), because I consider that a commission of some kind should be first appointed to ascertain the general feeling and wants of the people before we create new rights, which tend to perpetuate a double property in the soil."

Then Muhammad Hayat Khán,—

"By the usage of this country, the right of occupancy of tenants does not extend to the power of exchanging their lands. Most owners, fearful lest tenants should claim hereditary tenures at intervals of a few years take away from them lands already in their possession, and give them others in lieu to enable them to make their livelihood."

It would be easy to multiply opinions to the same effect. Here was another, that of Muhammad Sultán Khán,—

"But as rights exist, and justice and custom both demand that they should be accepted on good and sufficient cause being shown, no small matter should be allowed to set the acknowledged right aside. The tenant's right so acquired is simply that of continuous occupancy; to give them the right of selling and mortgaging at will will trench on the right of the proprietor; it was never known to exist and is opposed to justice: if allowed, what difference will exist between the tenant and proprietor?"

His Excellency confessed that he entirely sympathized with the writer of the passage last cited. It was impossible to find any difference between proprietor and an occupancy-tenant with such a power of alienation as the Committee proposed to confer on the latter.

His Excellency had just been reminded by his Hon'ble friend, Mr. Maine, that the privilege of adoption to which he had referred was founded upon some decision of the Chief Court. That might be, but while we were legislating, no judicial opinion was necessarily binding upon us. It would be observed that Mr. Saunders and Mr. Forsyth raised an important question when they expressed opinions that a broad scheme ought to have been framed for the enfranchisement of the double rights in land. It certainly appeared to him (Sir William Mansfield) that it was extremely to be regretted that this hint had not received the attention deserved by its great importance. In short it was a matter of something more than regret that the Committee, while dealing with the Bill, had not taken the opportunity of expressly extinguishing the double rights in the same property which the landlord and the ryot were said to possess, according to some one or other of the various modes known to the law of civilized countries. This might have been done so as to ensure the status of the

ryot who had been found to possess occupancy rights, to provide a just compensation to the landlord, and to get rid of the complication of interests which now existed, and which the Bill, if passed, would sanction. Hon'ble Members were perhaps aware of what the Austrian Government had done in Gallicia, and of what had subsequently been done throughout some of the larger provinces of Russia. Although there was no similarity between British subjects and the serfs of Russia, still when what was called freedom was conferred on the latter, question arose regarding their relation towards the proprietors and to the land, which were not without a certain analogy to the interests under consideration. When those great countries dealt with such matters, they went to work in a different fashion from that favoured in India. The problem with them was how, while giving freedom to the serfs, the respective rights of property should be separated and preserved from the dangers of endless dispute and litigation. Thus instead of giving double rights in the same piece of land after the manner proposed by the Bill, the Russian Government gave a freehold to the serf and compensation to the landlord. The manner in which this had been worked out both by Austria and Russia was not likely to commend itself to a legislature composed of Englishmen; but the idea lying at the root of the arrangements referred to was nevertheless sound, and, as tending to obviate recourse to future litigation, eminently expedient in a popular sense. A similar solution might have been attempted in the Panjáb, according to an English plan to which it was probable no objection could have been reasonably taken. Thus, long leases, say for two or even three lives might have been given in favour of all ryots with proved occupancy claims, those claims including what had been created under the original British settlement. This arrangement would have exactly fitted in with that part of the Bill which proposed to give compensation for improvements to out-going tenants.

It was too late now, however, to discuss a plan which at an earlier stage might have adjusted the controversy in a manner compatible with English notions, and which admitted of being made agreeable to the two parties concerned. But an idea, such as that which he had just thrown out, might be brought forward on some future occasion and adopted by the Panjáb Government if they were not then trammelled by additions to the rights or privileges which the present Bill proposed to give to the ryot,—additions which had not been contemplated by His Honour the Lieutenant Governor.

His Excellency would therefore once more say that, while in no way desiring to interfere with the rights of the occupant which had already been secured to him, he viewed with regret and alarm, the provisions of the Bill

which added to the occupant's position, and therefore still more prejudiced the proprietor.

The COMMANDER-IN-CHIEF concluded by stating that he reserved to himself the right of moving any amendment which might appear expedient to him in the sense of the foregoing remarks.

The Hon'ble Mr. MAINE said that the Commander-in-Chief had mistaken the purport of the remark to which His Excellency had referred. Mr. MAINE had intended to say that the Chief Court had established the heritable character of occupancy-tenures; but so far as he (Mr. MAINE) was aware, it had made no decision on the question of adoption.

The Hon'ble Sir R. TEMPLE desired to rejoin briefly to various remarks that had fallen from the several Hon'ble Members who had addressed the Council.

As regards Mr. Maine's remark that there would probably not be capital enough in the province to enable the proprietors to buy out the occupancy-tenants, this expectation might be very correct, but it rather went to show that the measure proposed by the Committee was safe enough.

Again, Mr. Maine had dwelt with great truth and force on the evils which would ensue if the rights recorded at the time of settlement were to be revised every time the settlement itself was revised. But, in fact, the general understanding in the Panjáb had been that the rights and titles so recorded were permanent; and that the revision of settlement referred only to the revenue demand which was limited for a period, and might be retained, raised, or lowered after the expiry of that period. But the rights and interests in the land, once settled, were never to be altered afterwards. And this was usually explained to the people.

Further, Mr. Maine had alluded to the provision whereby the presumption of occupancy-right in the record might be rebutted if the tenant had admitted himself subsequently to be only a tenant-at-will. But the Bill provided that such an admission must be *voluntary*. The framers of the Bill felt confidence that hereafter the Courts would take notice of this wording. The admissions which might have been drawn from a tenant on cross-examination by a revising officer, or an admission inferred constructively from the tenor of replies and statements, would not be admissions within the meaning of this Act. The admissions intended by the Act must be voluntary, that is made spontaneously by the tenant of his own accord, *ex proprio motu*.

In respect to Mr. Noble Taylor's remarks to the effect that it would be well if the peasantry of the Panjáb could be brought up to the same status as the ryots who were made virtually proprietors by the ryotwari settlement of Southern India, it might be observed that, although the tenants concerned in this Bill were differently situated from the ryots of Madras, yet the great mass of the peasantry in the Panjáb were peasant-proprietors with as perfect a tenure and title as could possibly be found anywhere.

As regards the doubts expressed by His Excellency the Commander-in-Chief as to whether occupancy-right had formerly any existence in the Panjáb, that was a matter of fact, on which a lengthened statement need not be made after all the discussion which had occurred. The allegation of the supporters of the Bill of course was this, that, despite the want of proper recognition, and despite many drawbacks, something tantamount to such a right did exist, and existed, too, at least as much as proprietary right. Sir William Mansfield had dilated with much truth on the importance of proprietary right, and had asked whether it was not possible to validate that right. No doubt it was possible, and the right had been thoroughly validated at the Panjáb settlement. He (Sir R. TEMPLE) had when a Settlement Officer been at pains to show that proprietary right in the abstract had been always understood, and at least nominally respected under Sikh rule. Of course, the confirmation which followed at the British settlement was something very superior.

From some of Sir W. Mansfield's remarks, it might perhaps be inferred that the modern school of Indian administrators, who derived their traditions from the great Mr. Thomason, and according to which traditions this Bill had been framed, differred in respect to the maintaining of proprietary right from the original school of Indian statesmen, such as Metcalfe and Mountstuart Elphinstone. But in one most essential particular, these two schools were the same, namely, in the definition and confirmation of peasant proprietorship. No set of officers had done more for the communities of village proprietors in Northern India than the disciples of Mr. Thomason.

It was remarked by Sir W. Mansfield that this Bill introduced two things not contemplated when the settlement of the Panjáb was made, namely, the succession of an adopted heir to an occupancy-tenure, and the power of alienating an occupancy-tenure. As regards adoption, if this tenure were recognised at all, it must be allowed to an adopted heir according to Hindú custom. And the rule of adoption was not new, but was set forth in the Panjáb Civil Code, which was promulgated at the time when all these settlements were going on. As regards alienation, in some sense it might be looked on as a novelty; but

then it was strictly limited in this Bill, and, instead of being extended to all occupancy-tenants, was narrowed to those superior classes of these tenants, whose status almost approached that of sub-proprietors.

It was apparently held by Mr. Strachey that even this Bill, good as it might be, would hardly afford perfect remedy to the occupancy-tenants for the objectionable revision which had been attempted to be made of their status. However this might be, he (Sir R. TEMPLE) was confident that this Bill did succeed in meting out justice to the tenants, and in securing to them their fair rights.

His Excellency THE PRESIDENT said—" Reserving my judgment on details, I must state in the strongest terms my anxiety that this Bill should become law to-day without alteration in any essential particular. The problem which it attempts to solve has now been under consideration for several years, and has been before this Government for three years. During this period, inquiries have been going on through a number of districts, by which the rights and the interests of a large portion of the agricultural population have been greatly influenced, and of course their feelings and anxieties have been seriously excited. We cannot stop here. What is wanted is to distinguish and define the relative rights and liabilities of the landholder and the ryot, and to lay down equitable rules for the guidance of Settlement Officers in deciding the questions which ordinarily arise between different classes of the agricultural population. We have heard a good deal to-day of the relative rights of landlord and tenant. But the facts of the case, in the Panjáb at least, are sufficiently simple, though doubtless any one with a little ingenuity could make out a pretty plausible case, especially in favour of a landlord on one side, a tenant on the other, and perhaps a superior proprietor over them both. When the Jalandhar Doáb was being settled, I remember asking the Hill Rájás, to whom did the land belong? With one voice they answered, 'to us, the Rájás.' Then when I asked the same question of the dominant section of the villagers, they said that the land belonged to a particular class or caste in the village, the Rájputs, Bráhmans, or the like. The cultivators, lastly, would affirm that while the lands held by the village-proprietors and the waste lands certainly belonged to those parties, the lands in possession of the cultivators also belonged to that class. The real explanation of all this is simply that the land, as a rule, exclusively belonged to no one class. In exceptional cases, the chief of the country or the State might cultivate certain lands by means of the services of serfs or servants, and in that case would take what represented the Government revenue and the profits of cultivation. But as a rule, it may be fairly

said that the State took the land-tax, which was usually so heavy as to leave no more than a bare subsistence to the other parties. But whatever was left was divided between the other classes, the proprietor getting nothing or next to nothing from the cultivator beyond the revenue due from the land he occupied. Thus up to a certain point, both in the Panjáb and the North-West Provinces, the right of both parties was scarcely discernible until, by the moderation of the Government demand, a margin in the shape of rent was created. Even under the British Government, where land was plentiful and cultivators scarce, it was not uncommon for the cultivators to be placed by the proprietors on the same footing as themselves, and to share equally in the profits of the lease which they received of the land assessment from Government.

But to keep to the particular question now before us, the fact is that no doubt proprietary rights in the soil do exist in the Panjáb, and do descend; but, nevertheless, wherever the Sikh official, whether Názim or Kárdár, in former days, had any interest in disregarding these rights, he did so as a matter of course. Where the cultivator was a good farmer, he was maintained in his holding, despite the wishes of the proprietor; on the other hand, where the cultivator was idle or unskillful, or where the proprietor represented a strong class, the cultivator went to the wall. Mr. Prinsep knew this very well. He has said that this occurred in the interest of revenue. Truly so. But this does not change the state of the case. The ryot, that is the cultivator, was liable to ejection, but from one circumstance or another was very seldom ejected.

A good deal has been said during the controversy as to the perfunctory mode in which the investigation regarding tenures of land in the Panjáb had been made during the past settlement. My learned friend, Mr. Maine, has not ill described the state of the case. Every one who has any knowledge on the subject must be aware that there was under Sikh rule neither private deeds, nor public records relating to the ownership of land; and that there was nothing but oral testimony to guide our settlement officers. That was absolutely the fact. Even where written leases of the annual revenue a village had to pay existed, that was no proof of proprietary right. The parties whose names were entered in the document were often strangers who farmed the revenue, and collected the different quotas from the occupiers of the land, or divided the produce with them. Or what was more usual, the individuals in whose names the lease was made out were the leading elders of the village, some of the co-parcenary body, who accepted the engagement on their own part and that of the brotherhood. There was no detail of how the lands were occupied, except perhaps with the village accountant, and then the nature of the tenure in each case was not

given. The Settlement Officer had thus to go into all the numerous and complicated questions arising from this state of things, and to determine them by oral testimony. There was seldom any difficulty as to the respective rights or shares of the different co-sharers. But as to the old tenants, things were far more obscure; and from one cause or the other, though mainly from the excessive pressure of the revenue, they for the most part held their land from father to son without being ever evicted. The exception to this state of things was so rare that as Mr. Maine has remarked it practically formed the rule that the tenant was not evicted.

In Hazára and in Multán, the Muhammadan proprietors of the land were ousted by hundreds and thousands by the Sikh government and their Názims or Governors. When we annexed the Panjáb, these lands were held by the cultivators, who were admitted to engage direct with the State for the revenue. In the Jalandhar Doáb even the Rájputs and Bráhmans had in many cases been ousted by the Játs, and other industrious races, inferior in caste, but superior in frugality and enterprise, and therefore better able to bear the fiscal burthens of the State. No doubt, as Sir Donald Macleod has said, these were cases of great injustice, and should not be taken by us as precedents to follow. Nevertheless they showed that the proprietor's right was not strong, and that the inducement to maintain the cultivator, provided he were industrious, was so great as sometimes to convert him into absolute proprietor, and usually to make his occupying tenure very secure. It was not that the tenant could not be evicted by the proprietor, but that the latter had no inducement to follow this course, and when he wished to do it would often be prevented by the Government official.

While speaking on this subject, I can recall to mind the evidence of a Sikh chief of some mark, now an elderly man, bearing on the light in which the proprietary rights in land were viewed in former times under Sikh rule. This Sirdár is a Jágírdár, and if I recollect right, a small proprietor of land also, and has an intimate acquaintance with such matters. His evidence is the more valuable, as it was given incidentally on a different, though in some degree a cognate, question—that of a claim to a Jágír. This Sirdár only a few months ago made the following remarks in reply to queries put to him in writing by the Panjáb Government:—

'The above was all the property of the Kanhye Sikhs, that is to say, it was in their Jágír; they were not proprietors of the soil. *The Sikhs never regarded proprietary right. They always put in or ousted proprietors as they pleased,* for the zamíndárí rights were nevertheless considered separated from the Jágír rights.'

The fact was that, while the Sikhs in their social relations to each other set a high value on proprietary rights in land, more particularly when these

were ancestral, their rulers acted very differently, and cared little who held or who cultivated these lands, provided that the revenue was punctually paid. And this circumstance, added to the fact that there was scarcely any, if any, margin left for rent, after the revenue was paid, is the true explanation how it was that the position of the hereditary cultivator was practically very much on a par with that of the proprietor in the same village. Rájá Sáhib Dyál, himself a jágírdár and a proprietor, and formerly like his father a large kárdár, or collector of revenue, under Sikh rule, in his replies to the queries put to him by the Settlement Officers, stated that the cultivators did not pay more than five per cent. rent to the proprietors of the land which they cultivated, and often nothing at all.

Mr. Prinsep in the different papers which he has written on the subject of the status of the cultivator under Sikh rule, quotes the evidence of different officers, all admitting that the proprietor of the land had the power of eviction. I will read extracts from the statements of two of those officers, both of whom were well acquainted with the subject on which they were writing. The first, Lieutenant Colonel Elphinstone, at one time the District Officer of Futtehpore Gogharah in the Multán Division, and subsequently holding the same position in the Jalandhar District, wrote as follows. Alluding to the condition of things in Futtehpore Gogharah, he said :—

'The distinction between hereditary and non-hereditary cultivators is a creation of our Government. Under the Native rule in this part of the Panjáb, it was altogether unknown. Proprietors had the right to eject any tenants whom they disapproved of, however long the latter may have resided on the estate. It is remarkable, therefore, that the cultivators should in some portions of the district, notwithstanding their uncertain tenure, have had the right to sell the 'kásht,' or cultivation of land. Instances of such a right being acknowledged frequently come under the cognizance of the Settlement Courts. This claim to sell the right of cultivation was always founded on the fact of the claimant having been the first plougher of the soil. It was therefore of some importance, when determining the position cultivators were to occupy, to ascertain to whom the claim of 'Buti már,' or first ploughing of the land belonged. In accordance with instructions issued on this subject by superior authority, all cultivators who could make out their claim to the 'Buti már' were recognized as hereditary cultivators, a privilege also conferred on those who had cultivated for eight years, if residents in the village, and twelve years if non-residents.

'Land, however, is so abundant and the population so scanty, that I have never found proprietors object to have their cultivators entered in any class, the latter might prefer themselves. The privilege of being a 'Maurúsí,' or hereditary cultivator, is by no means highly prized, facility of removal being the chief object aimed at. Now the idea is very prevalent among them that, by becoming hereditary cultivators, they may ultimately be

made responsible for the Government jama in case of failure on the part of the proprietors, a belief which has probably been strengthened by the fact that Tahsíldárs, during the summary settlement, often realized from the cultivators themselves. It is not very surprising, therefore, that cases should frequently occur, in which this privilege of becoming hereditary is most strenuously declined, to the despair of the proprietor, who, in the desire of his asámis to become non-hereditary, recognizes a sure indication of their being prepared to leave his village whenever superior temptations shall be held out to them by his neighbours.

'If with our light assessments, proprietors are not only ready but anxious that the holdings of their tenants should descend from father to son, how much more must they have desired this when they were rack-rented by the Sikhs? And if the mere fact of his being the first plougher of the soil entitles a man to sell his tenure, what shall be said of the proposal to reduce to the status of a mere tenant-at-will a man whose ancestor not only reclaimed the soil, but met all the revenue engagements of the proprietor when he was unable to do so himself, and who transmitted it to his descendants as an heritable property, and who, in the assurance of their tenure being a fixed one, have expended capital in building houses and agricultural buildings'.

Mr. Wynyard, the Settlement Officer of Ambála, who was conducting these duties so long ago as 1846, when I was Commissioner of the Jalandhar Doáb, made the following remarks in one of his reports:—

'309. Rights of tenants. I have stated above that I have not experienced much difficulty in deciding the amount of rents to be paid by the tenants, but numerous and somewhat difficult cases have arisen turning on the question—who is a tenant and who is a proprietor? As I have before observed, the Sikhs made no distinctions between proprietors as a body and tenants. With the exception of one or two headmen, or favored individuals, all were treated alike; zamíndárs and asámis were alike made to pay the high rents demanded of them; nor were matters much mended under our early revenue administration. Now, however, when the khewat and khatáon are carefully read out in the village, and thoroughly explained to the people, and when they understand that the zamíndár has to pay only two-thirds of the rent, whereas the tenant has to pay the whole; in short when they understand that we acknowledge the difference between proprietors and tenants, the latter persons, who have hitherto been in as bad a position as the zamíndárs, who have not engaged for the Government revenue, think that they ought now to be placed in an equally good position, and have urgently pressed their claims to be admitted as proprietors. Each case has been tried, either by Panchayat (jury) or on its merits, and separately disposed of; many of the claims are utterly futile, and founded solely on length of possession, which, though it does give a right to continued occupancy without enhancement of rents, gives him no right whatever to a share in those rents.

'I have never failed to keep this distinction clearly before me, and to urge on the officers working with me the great difference which exists between a right to possession of land at a fixed rent and a right to hold lands paying only the share of jama due for those lands. The admission of tenants to the proprietary right is a certain way to weaken the responsibility of the brotherhood.

'310. And yet it is not easy to dismiss the claim of a man who has for years been bearing up against heavy assessments, and paying his share with the proprietary brotherhood. He is entitled to praise and consideration, but he is not entitled to another man's birthright, and I have thought it quite sufficient, if he is not one of the bhaiyáchárá, to record him as a tenant, and to fix, if he requires it for his protection, a money rental 30 per cent. in excess of the revenue rents.'

These extracts are quoted by Colonel Lake in his letter of the 26th May 1865 to the Secretary of the Government of the Panjáb. Mr. Strachey has alluded to passages in this letter. And I will only therefore read a few words in it. In paragraph 20, alluding to Mr. Wynyard's report, Colonel Lake says—

'This and other settlement reports and the experience of every officer who has enquired into the tenures of the Panjáb will bear me out in saying that, while on the one hand, property in the European sense of the term has been created by the British Government in the Panjáb, on the other hand, there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted, like any other heritable property from father to son, and for which either no payment was made to the so-called proprietor, or if payment was made, it was of the nature of the dues of copyhold and customary tenure in England to the lords of manors, rather than of those paid by tenants to proprietors.'

Colonel Lake, when he thus wrote, was Financial Commissioner of the Panjáb, in which he had served since 1846, and is justly eulogized by the Lieutenant Governor as one of the ablest and best officers in the province. He was employed in making settlements of the land-revenue in that year, when the Jalandhar Doáb and Kangra District were ceded to the British Government by the Sikh Power.

Then again, if I turn to the schedule prepared either by Mr. Prinsep himself or under his direct authority, and which is signed by him, 'showing the relations existing between landlord and tenant as reduced to a set of rules, showing the main classes of tenants, the rights and usages prevailing, and when exceptions are allowed to oppose the usage in each class,' what do I find? I find that there are recorded no fewer than thirty-eight conditions, under which the cultivator is exempted wholly, or in part, from eviction. I will enumerate a few of them.

'(1). Provided, occupant has not exercised the powers attending absolute ownership on improvements, such as sinking wells, planting gardens, &c.

'(2). If the person is merely occupying for an absentee or for some proprietor, not in possession of his share or rights, and a claim is made by latter for restitution, and intermediate outlay has been incurred, then compensation for losses must be paid before the occupancy of such shareholders can be disturbed.

'(4). Provided the occupancy did not arise out of an order of a Kárdár or of a Jágírdár, or ruler of the day.

'(5). Or that the land was not made over for cultivation as unto an ordinary tenant, with permissive occupancy by the so-called landowner, who has never previously exercised power of grant, lease, exchange of fields, or eviction.

'(12). Provided that the tenant did not originally reclaim the land from waste.'

Thus it appears to me clear from this evidence and much more which might be adduced, that various classes of cultivators had beneficial interests in the land in the Panjáb under Native rule, and that it is sound policy that we should define and maintain these interests, placing them on a secure basis. It is this which the proposed law now under consideration aims at. It is a fair and wise compromise between conflicting interests of great magnitude, on which the prosperity of the Province largely depends.

Mr. Prinsep is of opinion that as regards the rights and position of tenants in particular, the enquiries of the Settlement Officers were insufficient, and that whenever it would appear that he had been twelve years in possession of his land, he was recorded as an hereditary cultivator with rights of occupancy. But from the quotations I have made, as well as from the settlement papers generally, it is abundantly evident that the Settlement Officers knew what they were doing. If mistakes were made, and I have no doubt that such was the case, the proprietors of land and their representatives, the village headmen, had only themselves to blame. The Native officers who prepared the village papers went into a village or collected the village-accountants and elders, and took down from the former in presence of the latter all the particulars regarding the lands, and classified accordingly the village-measurements. Where there was no dispute, no contest, the returns were filled up at once, and signed by the patwárí and lumberdárs. Where disputes arose, they were disposed of or referred to superior authority. When the records of a village were completed, a proclamation was, if I recollect right, put up in the village hostelry calling on dissatisfied parties to appear and make their complaints. These settlement operations went on in the same district for months and even for years, during which time appeals were open to the Commissioner of the Division.

As I have before said, errors may have been committed, but they were not so numerous as has been asserted. Proprietors of land in those days were content to give cultivators rights, which they did not consider it worth while to claim, but which they now desire to resume. But allowing that there were errors committed, I hold with Mr. Maine that, considering that almost in no case had

the tenants in whose favor these errors were made, held for less than twelve years, and that in many instances they and their ancestors had been in possession for generations, it would have been better to have maintained what had been done. In such cases the adverse rights of the proprietor had remained dormant so long as practically to have become extinct. Surely at any rate under such circumstances, we are right to require that the burthen of proof that the tenant may be evicted should rest on the proprietor.

His Excellency the Commander-in-Chief has cited in support of his arguments against the tenant the writings of Sir Charles Metcalfe and Mountstuart Elphinstone. There are few names which I hold in greater reverence than those of these two statesmen. But with deference to His Excellency, I do not think that he quite understood the circumstances under which Sir Charles Metcalfe expressed that celebrated opinion to which reference has so often been made. I am quite sure that it was never intended to bear against the cultivator. Sir Charles Metcalfe was at that time Resident at Dehli, and from long personal experience and considerable knowledge of the landed tenures in the Dehli territory, I can say with confidence that there were no large proprietors there. The lands were held by village communities, by co-parceners forming brotherhoods, descended from common ancestors. Probably ninety-nine out of a hundred of these proprietors were mere yeomen or even peasants. Most of them were Játs in race, holding their lands on tenures closely resembling those of the Panjáb. The only difference between these yeomen and those of a large part of the Panjáb was one of religion. In the Dehli territory they are generally Hindús: in the Panjáb they have become Sikhs and Muhammadans. So far from an aristocratic state of things existing near Dehli, the social condition of these yeomen is essentially republican. These famous village municipalities which Sir Charles Metcalfe had in mind, when he wrote, were then, as they are now, in a more perfect condition than those in the Panjáb, because the Native government had not interfered with them.

Then as regards Mountstuart Elphinstone, no doubt he intended to describe the ancient system which prevailed in India, regarding which his account was accurate. But in Western India, of which he had most knowledge, the village commonal system had generally disappeared. In that part of India, we constantly find it asserted that there is no proprietary right among the people at all. There it has often been affirmed that the land belongs to the State, and I believe that as a rule no third party intervenes between the Government and the cultivator of the soil. No doubt there are here and there petty Mírásí proprietors, but these are quite exceptional.

They are the remnants of the great mass of proprietors who have long been swept away. Although no doubt to a great extent the authorities deal with these cultivators as if they were proprietors, allowing them to engage directly for the land-revenue for their several occupancies, nevertheless there seems no common bond of union among those of the same village, and if they refuse to pay the enhanced rent or revenue demanded, or lay claim to the waste lands within the area, in the first case they would be liable to ejectment, and in the other the claim would be denied. On this side of India, everywhere a considerable margin between rent and revenue is allowed, which in most cases accrues to the proprietor; in Western India, as I understand the matter, either the State takes that difference in the shape of increased revenue, or what is probably the case, it is divided between the State and the cultivator.

In Western India it is notorious that during the period which elapsed from the time of the wars of Aurungzebe in the Dekkhan and Central India to the close of the Pindárí and Mahratta depredations, nearly all the proprietary rights in the soil were swept away, and the mass of the people destroyed, so that the land to a great extent lay waste until things were restored by the peaceful influence of British rule.

On this side of India, I refer more especially to the Upper Provinces, whether it was from the innate force and vigour of the mass of the people, and their capacity for uniting in self-defence, things were different: the proprietary rights in the land, though no doubt often assailed, and even often usurped, were more generally maintained; and when usurped, the village communities kept together, and from time to time asserted their rights. But it is equally certain that these rights were not absolute, and that the Government of the day maintained its right to take as much revenue as it could possibly realise, and to interfere with a high hand even with the landed tenures. It is only under British rule, and mainly from the date of the now much decried settlements of 1832 and 1833, that a real limitation on the demands of the State has been fixed, and a reasonable margin in the shape of rent has accrued to the proprietors of the land.

In this Bill the Committee have dealt with the matter in a fair and liberal spirit. They have not declared and confirmed the interest of the proprietor to the exclusion of those of the cultivator, nor have they treated the proprietor as if he were a mere incumbrancer on the land, the right to which was really vested in the ryot. That is the right way of settling the question. The Government has a right to deal with it. The Government has sacrificed revenue in reducing assessments on land. They have thus created rent where none previously

existed. We have a right to apportion the property so created, and if the present Bill is passed, we shall give the proprietors a large share of that property, while leaving to the cultivator a sufficient reward for his labour."

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved that the whole of section 2, clause 2, be omitted; and

That for section 6, the following be substituted:—

"Every other tenant whose name appears in the records of a regular or revised settlement of land revenue sanctioned by the Local Government, as having a right of occupancy in land which he or the person from whom he has immediately inherited, has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied, unless, during the progress of any subsequent settlement of the revenue of such land he admits, in the presence of the Officer employed in making such settlement, or before any Officer authorized to attest the entries in the record of the same, that he is liable to be evicted at the will of his landlord, and such admission is recorded by the Officer so employed or authorized,

or unless the landlord establishes in a regular suit that the tenant's right of occupancy was recorded through a mistake of fact or without the consent of the landlord, and contrary to the custom prevailing in the District wherein such land is situate within forty years previous to the institution of such suit."

He said:—"I propose with your Excellency's permission to put before the Council in one motion the first two amendments, of which I have given notice, as both are founded on the same ground of objection to the Bill, viz., that it purports to assign to the registration of certain rights in property, a degree of authority in regard to the validity of such rights which I believe to be without precedent in previous legislation.

By the letter of the Secretary to the Government of India in the Foreign Department, dated the 31st March 1849, addressed to the Board of Administration of the Panjáb, the Courts of that Province were enjoined to proceed in the adjudication of matters coming before them in accordance with the spirit of the Regulations in force in the Bengal Presidency. Chief amongst those Regulations relating to land revenue settlements is Regulation VII. of 1822, and if the proceedings of the Settlement Officers of the Panjáb were governed by any law, they must be deemed to have been guided by the provisions of that enactment. By Section 1, Regulation VII. of 1822, the principal efforts of the Settlement Officers were directed to the object of 'ascertaining, settling, and recording the rights, interests, and properties of all persons and classes occupying or cultivating the land;' and by Section 9 of the same Regu-

lation, Collectors and other Settlement Officers were enjoined, whilst making or revising a settlement of land revenue, 'to ascertain and record the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community.' For this purpose it was added, 'their proceedings shall embrace as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.'

By Section 14, Collectors, when making or revising settlements, were required 'in cases in which any dispute might be found to exist in regard to the nature of the tenure of any person occupying the soil, to declare in an official proceeding to be incorporated in the rúbakàrí of settlement, the nature and extent of the interest actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction the grounds of his determination.'

It is clear from these sections, that in disputed cases only, and after full investigation of the evidence offered by both parties, the results of which examination were set forth in an official proceeding, could the Settlement Officer's action as regards the record of the rights of the occupier of the land be deemed to be in the nature of a judicial award. This award which, in the Regulation Provinces, might be set aside in a regular suit if brought within the period fixed by the law of limitation for the time being in regard to such suits, was in the Panjáb made final (subject of course to the usual appeal) by the orders of Government, dated 1st September 1849.

Any other record of rights and interests in the land under settlement amounted to no more than a simple registration entitled to a certain degree of weight as evidence *pro tanto* of the subject-matter comprised in it, or (to use the words of the Regulation) admissible 'only as one means of proof in regard to the interest' evidenced by it, but conclusive of the validity of the rights recorded only so far as it could be shown to represent the true facts of the case as regards the existence of the rights recorded at the time of settlement and their prescription by local usage.

I am aware, Sir, that in laying down this position in regard to the state of the law applicable to the record of tenant-rights at the time of settlement, I am stating an apparent contradiction to the statement made by the Hon'ble and learned member opposite (Mr. Maine) on a point on which he is necessarily far more competent to speak authoritatively; but, if I rightly understood the Hon'ble member, his assumption that every record of rights and interests in the land made at the time of settlement in the Panjáb, obtained under the orders of Government in regard to settlement-awards in that Province the force of a decree of Court, was founded not upon his own construction of the law, but upon the supposed opinion of the Chief Court to that effect. I think that my Hon'ble friend was in error in attributing such an expression to the Chief Court. I have before me a copy of the Court's minute on the subject of this Bill, and I will read to the Council an extract therefrom. 'The Court in stating the facts of the case as regards the extent to which the special orders of Government had restricted the jurisdiction of the Civil Courts in regard to the awards of Settlement Officers, cited a passage from the letter of Government addressed to the Board of Administration of the Panjáb, which declared that the decisions of the Settlement Officers under their authority should be considered final (subject to the usual revenue appeal) in all cases decided on their merits.'

I submit that it is plain from this extract, that the orders of Government, applied only to cases in which the Settlement Officer made a regular judicial award, and that the Chief Court in citing the passage affirmed no more than that the effect of the Government orders was to make the Settlement Officer's proceedings final and conclusive as to the validity of the record in such cases only.

Rights and interests in the land evidenced by any other settlement record or registration, and it is to such rights and interests that the Bill is chiefly designed to give validity, were liable to be disallowed by the Settlement Officer on a revision of the original settlement, or by the action of the Civil Court at any time.

I know that it has been doubted whether, under the Regulation above mentioned, the Settlement Officer has the power of amending the record in regard to the rights and interests of the occupants of the land under settlement; but I can recognize no reasonable grounds for such doubt. The provisions which empower or rather require the Settlement Officer to record the fullest information in regard to such rights and interests, apply as expressly to the time of revision of settlement as to the time of making

the original settlement, and although there is nothing in the section conferring these powers on the Settlement Officer to show that the record of rights in the land prepared at the revision of settlement was to be substituted for and supersede the record of rights framed during the previous settlement, yet, from the words which occur in section 1 of that Regulation, 'until the same shall have been formally altered, or it shall be shown by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete,' it is to be inferred that such substitution, *i. e.*, a formal alteration of the record made otherwise than as the result of a regular suit, was contemplated by the enactment.

I know of no authority, moreover, for the assumption that the Legislature in framing the Regulations relating to the settlement of land-revenue, designed to accord to the settlement record any greater permanency in respect of the rights and interests of the occupant of the land to which it related, than it possessed in regard to the assessment of the Government revenue on such land.

It is necessary to consider here how far the existing law, as regards the status of the settlement record, will be affected by the provisions of the Bill to which my proposed amendments have reference. By the 2nd clause of section 2, all entries in respect of matters comprised in Chapters 3, 4, 5 and 6, *i. e.*, such matters as enhancement, ejectment, sub-leases, alienation, and compensation of the Bill are, when attested by the proper officer, deemed to be agreements, and, as such, to bar the operation of the Bill in regard to such matters. We have no evidence to show to what extent entries relating to these subjects were made in the records of former settlements; but from the unanimously expressed opinion of the several officers of the Panjáb who, under the designation of the Murree Committee, have reported on this Bill, that the clause, if retained, 'would, to a large extent, neutralize the operation of the Act,' it is to be apprehended that such entries in the settlement record were frequent, and that the interests of a large number of persons will be prejucially affected by them.

It seems to me that it is altogether unreasonable to assume the intelligent assent of both the parties affected thereby to the subject of any entry in the settlement record comprehended by this clause; yet it is upon such an assumption only that the retention of the clause can be held to be justifiable.

The fact of a right of occupancy being vested in any tenant having been recorded in any former settlement sanctioned by Government, is, under section 6 of the Bill, to be held to validate such right unless the landlord proves in a

regular suit, (1), that other tenants of the same class have, within 30 years previous to the institution of such suit, been *ordinarily* evicted from their holdings; or (2), that the tenant in whose favour the right of occupancy was recorded, has voluntarily admitted in the presence of a Settlement Officer that he is not entitled to the right so recorded.

The result of this provision, as I understand its effect in regard to the landlord's second ground of resistance to the presumption raised by the record in his tenant's favour, will be that, whilst every admission of the incorrectness of his previously recorded status made by the tenant during the revision of settlements made prior to this Bill becoming law, will possibly be upheld by it, and the reliability and credibility of such admissions or proofs of the incorrectness of the former settlement records thereby acknowledged, the rectification of errors in other such records in future revisions of settlements will be absolutely barred; for the Settlement Officer must, in future, presume the correctness of the record and the validity of the recorded right of occupancy until the contrary be proved.

From admissions of his not being entitled to a right of occupancy made by the tenant in former revisions of settlements, the landlord can only derive benefit after a successful regular suit; and the insertion of the word 'voluntarily' in the clause which provides this ground, is calculated to suggest a vexatious defence by the tenant and to impose an unreasonable burden of proof on the landlord.

Except, therefore, in the cases in which admissions of the incorrectness of the former record have been made during the revision of settlements in the Amritsar Division, and which the landlord may succeed in substantiating in a regular suit, he is reduced to the single ground of resisting the status accorded to the tenant by the record by proof in a regular suit that other tenants of the same class have been ordinarily evicted within thirty years previous to the institution of such suit.

This last ground of resistance left to the landlord is in no small degree vitiated by the use of the term 'ordinarily,' which is so indefinite as necessarily to raise a question most difficult to determine, and which is certain to be variously interpreted, viz., what number of evictions must be proved to establish a fair rebuttal of the presumption in the tenant's favour?

Moreover the period within which such evictions must have been effected, fixed by the Bill, is calculated to make the clause in all probability almost, if not wholly, inoperative; for, it is generally admitted that since the establishment

of British rule in the Panjáb, ejectments of tenants have not occurred, and that for several years previous to the annexation, the state of the country was so disturbed, and the difficulty of procuring cultivators was so great, that their ejectment in any circumstances at that time was hardly to be expected.

Practically, therefore, the Bill sets up an almost absolute right of occupancy in favour of the tenant to whom such right has been assigned in the record of former settlements, save in the cases in which, at the time of the revision of those settlements, the right has been disowned by the tenant.

Is such legislation justified by the circumstances of the case as regards these records of former settlements so far as they are known? For, what are the circumstances of the case? Why, in the course of the revision of those settlements which has been going on for the last five years, in the Amritsar Division alone, out of about 60,000 cultivators who were recorded at the former settlement as having a right of occupancy, no less than 19,000 (or nearly one-third of the whole number so recorded), admitted that they were mere tenants-at-will. I put out of account altogether the large additional number of disputed cases in which the revising Settlement Officers held that the status of a right of occupancy had been wrongly conferred in the former settlement, and I submit that the undisputed results of the revision of the former record of tenant rights, so far as it has gone, prove clearly, if other evidence was wanting, that numerous mistakes were made in the preparation of the former settlement records.

The law under which those records were prepared required that they should contain a faithful representation of the rights and interests in land, as they existed at the time of settlement, it is abundantly evident, however, from the reports of the Settlement Officers written at the time of the former settlements, that the rights of occupancy then recorded were created by the settlement, for the most part, on the purely arbitrary test of an actual occupancy for twelve years or upwards, and that previous to that settlement, such rights had no recognized existence.

In proof of this, I will read to the Council extracts from those reports, and first I will quote the statement of the Hon'ble mover of this Bill, who conducted the first settlement of the Jalandhar district. In paragraph 207 of his report of that settlement, Mr. Temple stated that '*the rights of occupancy apart from proprietary rights were unknown.* * * * The Government may have partially recognized it, but the people did not; however long a patch of land may have been occupied, *the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur.*' Again, in para-

graph 298,—'it was not attempted to fix any terms of occupancy which should *per se* entitle a cultivator to rank as hereditary, but it will be found that cultivators who have been in possession of the same field for 13 years and upwards, *have at the present settlement generally been vested with hereditary rights;*' and in paragraph 302,—"*the distinction between hereditary and non-hereditary cultivator is not indigenous to this part of the country. It has been introduced by the settlement.*"

Mr. Davies, in his settlement report on the Gurdaspúr district, paragraph 25, stated that,—'a right of heritable occupancy has been conceded to a large proportion of the cultivators of the tahsíl: the title is commonly founded on a prescription from 12 to 20 years.'

In Mr. Cust's report of the settlement of Shakargarh, a pargana of the Gurdaspúr district, it is stated (paragraph 36),—'the status of the hereditary cultivators, or tenants with right of occupancy, *was created in this pargana as elsewhere by the Settlement Officer;* it was defined to be cultivation of one plot for 12 years uninterruptedly accompanied by residence within the village, or uninterrupted cultivation of 20 years without residence.' In his report on the settlement of the Lahore district, Mr. R. Egerton, the present Financial Commissioner of the Panjáb, wrote (paragraph 15),—'the rights of the hereditary cultivators *have been entirely created under our rule.* Under the Sikhs, the proprietor had *always the right of ousting a tenant whenever he chose.*'

It appears to me, Sir, that stronger evidence than is afforded by the foregoing extracts from the reports on the former settlements of land revenue in the Panjáb, could hardly be adduced to show that the records of those settlements so far from representing the rights and interests in land, as then existing under the prescription of local usage, were, as regards those rights and interests, framed on an arbitrary principle initiated by the Settlement Officer at the time of settlement, and that the rights of occupancy then recorded were distinctly opposed to the previously existing custom which governed the relations subsisting between landlord and tenant on the question of the permanency of the tenure under which the latter occupied his land.

Officers employed in conducting the first settlements of the Panjáb, recorded the fact, as the result of their enquiries, that under the Sikh rule evictions of tenants by the landlords were commonly allowed and made, and this statement was recorded, it should be remembered, at a time when the question now at issue excited no interest whatever, and men's minds consequently were necessarily free from any possible bias in the matter.

The principle on which rights of occupancy were allowed for the record of former settlement, which rights, as I have already shown, are almost absolutely validated by the provisions of this Bill, *i. e.*, the fact of a continuous occupancy for twelve years or any other arbitrarily fixed period is wholly consistent with section 9 of the Bill; and this inconsistency deprives the proposed legislation of any support from what might otherwise have been cited as the analogous conditions on which rights of occupancy were conferred on the tenant by Act X of 1859.

Lastly, I have to draw the attention of the Council to the manifestly partial spirit of the provisions of this Bill towards the interests of the tenant as evidenced by section 8. After exhausting in the previous category of tenants having a right of occupancy, every known ground on which a shred of a claim on the part of a tenant to maintain a right of occupancy against landlord could be supposed to exist, the Bill goes on to provide in this section that if the tenant can set up any other ground of claim, he shall not be precluded from doing so. The benefit of a recognized local custom ignored when the landlord's interests were at stake, is thus conceded to the tenant.

No doubt it will be said that this provision was introduced at the suggestion of the Committee of Officers of the Panjáb, assembled at Murree for the purpose of considering and reporting on this Bill; the fact is, however, that the Murree Committee proposed this section merely as a rider to a section which they desired to substitute for the existing section 6, and which, if adopted, would have secured in the manner contemplated by my amendment the recognition of local custom as a ground of rebutting the presumption raised in the tenant's favor by the settlement record. That Committee in their proposals were manifestly actuated by a sincere desire to do justice to both parties. The majority of the Committee readily accepted so much of the proposition as would subserve the interests of the tenant, but rejected its counterpoise in favor of the landlord.

I cannot conclude these remarks without expressing the regret and surprise with which I heard the proceedings of the revising Settlement Officers characterized by an Hon'ble member opposite (Mr. Strachey) as 'monstrously illegal.' I have already stated my own conclusions as to the authority of the existing law for the alteration of the record of tenant-rights by the Settlement Officer when engaged in revising the settlement. I will now read to the Council an extract from the Minute of the Chief Court of the Panjáb, which has already been cited by Mr. Maine as authoritative in laying down the state of the existing law which regulates the proceedings of the Settlement Courts of that Province.

In paragraph 18 of its Minute, the Court remarks as follows :—

'Now it cannot be doubted that Mr. Prinsep had full warrant of law for correcting errors and omissions in the records of the previous settlements, but the question has arisen as to the legal force and effect of his proceedings when taken and recorded.'

That is the opinion, Sir, of the highest Court of the Province in which the Settlement Commissioner was employed as to the perfect legality of his taking cognizance of the errors of the record framed at the former settlement. I submit, therefore, that the imputation which has been made in this Council on the character of the Settlement Officers' proceedings was not warranted by the facts of the case; I agree with His Excellency the Commander-in-Chief in the remarks which fell from him on this subject. I hold that in any case such remarks in this Council are ill-advised as calculated to harass zealous and conscientious public servants in the faithful discharge of their duties. Moreover in the present case, it cannot be unknown to Hon'ble members, who have perused the printed papers on the subject of this Bill, that the Settlement Commissioner at the very outset of his proceedings, earnestly solicited an expression of the views of Government in regard to the question of amendment of the settlement record, and that he thereafter continually pressed the subject upon the attention of Government. The Lieutenant Governor of the Panjáb in his Minute has expressly and emphatically accepted the responsibility of the Settlement Commissioner's proceedings, even if those proceedings had been unauthorized by the existing law, any personal censure on that officer could not have been justified.

It has been charged against the Settlement Officers that they have fomented public agitation on the subject of rights of occupancy, which subject had no real or deeply-felt interest to the people when left to themselves. That this imputation is ill-founded I hold to be conclusively proved by the following extract from the Lieutenant Governor's Minute, dated 10th February 1868 :—

Para. 15. * * * * For *many years past*, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, viz., that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers who are most careful to enquire into the feelings of those about them * * *.'

The Hon'ble Mr. Maine said that it was not he who had spoken of the "monstrous illegality" of the proceedings of the Settlement Officers. He did not deny that those proceedings had some colour of legality. His objection was that the Settlement Officers had not observed the procedure prescribed by law, and had revised the settlement record not upon complaint, but officiously and of their own motion. As to the observations of his Hon'ble friend (Mr. Cockerell)

on the effect of investing the first Settlement Officers with judicial powers, Mr. Cockerell had apparently taken for a legal argument what was intended to be an argument of another kind. Mr. MAINE never intended to say that a mere entry on the first settlement record constituted the matter described *res judicata*. It was plain upon the orders of Government that no such effect was intended. But Mr. MAINE had dwelt on the moral guarantee implied in bringing courts of justice to the doors of the people at the moment when rights were under investigation, and opening those courts for the establishment or rebuttal of occupancy-rights in disputed cases. He had meant to say that every decision of those courts must have disposed of hundreds of cases on all fours with the point decided. It was not necessary for him to discuss his Hon'ble friend's amendment at any length, since he had unwittingly anticipated what appeared to him the proper reply. On the operative part of the amendment, he had, however, to say, first, that he did not completely understand what was meant by making "mistake of fact" a ground of rebuttal. He could only say generally that he objected to opening mistakes of fact after such a lapse of time. The next words introduced by his Hon'ble friend were apparently intended to obviate the difficulty felt by Mr. Cockerell as to the effect of the word "voluntarily" in section 6 of the Bill in casting the burden of proof on the landlord. Mr. MAINE held on the principle that no one can be forced to prove that which is wholly beyond the range of his knowledge, it would be for the tenant to show that the admission which he was proved to have made was not voluntarily given. To the last word proposed by his Hon'ble friend Mr. MAINE would not have objected but for the ideas which appeared to be entertained by the Punjab Settlement Officers as to the nature of a custom. *Primâ facie* it was quite right and proper that the presumption created by the entry on the record should be rebutable by establishing a custom of eviction. But when Mr. MAINE found those officers coupling the assertion of the existence of a custom with the admission that there was no known instance of the exercise of the customary right, he could not help thinking that the introduction of the term would be dangerous. It was safer to require the landlord, as the Bill required him, to prove the practice which every court of justice would compel him to prove as the foundation of a custom in the legal sense.

His Excellency the COMMANDER-IN-CHIEF said :—"With reference to Mr. Cockerell's final remarks, I should like to put a question to my Hon'ble friend Sir Richard Temple. During the debate on these amendments, I have been advised that there was a condition in the former settlement to the effect that tenants thereby declared to have a right of occupancy were only to have that right subject to alteration or revision if, on further examination, any such change

appeared to be required. If this were so, a great deal turned upon an important point. It was said that the decisions of the officers on the original Panjáb settlement assume the weight of judicial decisions. But if my information be correct, the greatest doubt must be thrown on the inferences drawn by my Hon'ble friends, Mr. Maine and Mr. Strachey. When the conditions of section 7 of the Regulation of 1822 are considered, it appears that they hang strangely together with the information I have received, and almost prove the latter to be free from error. What I want to know is whether those tenants were warned of the possible alterability of their tenures, and if so, whether this were done in the pursuance of any rules for the guidance of the Settlement Officers? Had I had more time, it would have been possible for me to have ascertained by reference to the rules under which the Settlement Officers had acted. But it would be recollected that the revised Bill and Report had only been for four days in the hands of Hon'ble members. If the information is declared to be incorrect in which my question is based, I should like to be favoured with documentary authority."

The Hon'ble Sir R. TEMPLE:—"I have no hesitation in denying positively that there was any such condition in the former settlement. There was such a practice in the Central Provinces, but it never existed in the Panjáb."

His Excellency the COMMANDER-IN-CHIEF asked Sir Richard Temple to produce any books in support of his denial, observing that a great deal of doubt had been thrown to-day on the value of oral evidence.

The Hon'ble Mr. MAINE observed that anonymous information was also open to doubt. On ordinary principles some *primâ facie* case should be made out before Sir R. Temple was called upon to prove a negative.

After some further conversation, the PRESIDENT interposed and the debate proceeded.

The Hon'ble Sir R. TEMPLE, in opposing Mr. Cockerell's amendment, said that any such modification of the terms of the Bill would open a door to the revision and reconsideration of the status of the mass of occupancy-tenants in the Panjáb; it would admit of the proprietor contesting the title of every such tenant, and would tend to throw the burden of proof on the tenant. All this, for the reasons repeatedly given, would be most objectionable.

Most of the points in Mr. Cockerell's argument had already been answered, and further reply in detail would not be needed. The main point was Mr. Cockerell's allegation that, as regards occupancy status, the settlement

record had been made in mistake of fact and in opposition to custom. Now, the main fact on which the record had, in this respect, been founded, namely, twelve years' possession, was not mistaken at all, but was undeniably correct. And as to custom, no such thing in the sense intended, namely, a specific and demonstrable custom, existed in the Panjáb with respect to occupancy-right.

Then Mr. Cockerell had implied that the settlement record, excepting only the separate judicial awards, was simply a registration. But in fact it was much more than a registration; it conveyed titles to tenures and titles to land and to the interests bound up therewith. If any doubt had been cast on its validity regarding tenant-right, that doubt would be removed by the Bill.

It seemed to be supposed by Mr. Cockerell that the Regulations of 1822 and of 1833 were the only rules under which the Panjáb settlements had been made. But, in fact, there were other rules; notably the directions to Settlement Officers and the circulars of the Board of Administration, to which indeed observance was mainly paid by the Settlement Officers.

A quotation had been made by Mr. Cockerell to show that tenant-right had been "created" at the settlement. The force of this entirely depended on the meaning of "created." If it meant something not before existing, then occupancy-right had not been created, for occupancy had largely existed before. If it meant something precariously existing but now confirmed, then, in that special sense, occupancy-right might be said to have been created. But in that sense, proprietary right had also been created. In short, occupancy-right had been no more created than proprietary right.

Again, Mr. Cockerell had quoted his (Sir R. TEMPLE's) settlement report of 1850-51 to show the *non*-existence of occupancy-right. Hereon it would suffice to refer the Council to his (Sir R. TEMPLE's) speech of the 11th April, in which the very passages quoted by Mr. Cockerell had been quoted by Sir R. TEMPLE himself. But at the same time other passages were quoted by Sir R. TEMPLE, which showed that, though in some respects tenant-right was not acknowledged, yet that in reality it existed. It would not do to quote these passages singly; they must be taken together, so that their collective sense might be gathered. But was there anything inconsistent between this Bill and the settlement made by Sir R. TEMPLE in 1850-51? Quite the contrary; there was perfect consistency. For in truth this Biil confirmed by legislation exactly what was done at that settlement.

As to the Lieutenant Governor's opinion quoted by Mr. Cockerell, to the effect that the recognition of proprietary right engendered ill-feeling among the

proprietors, this must allude to the circumstance already explained, namely, that once they were willing from natural self-interest to acknowledge tenant-right, but that now, from a change, fancied or actual, in their interest, they were sometimes disposed to repent of that acknowledgment.

The Hon'ble Mr. COCKERELL.—"I wish to offer some explanation in reference to a remark which fell from an Hon'ble member opposite (Mr. Maine) as to the intention of the words 'through a mistake of fact' which occur in my second amendment. It has been already stated that rights of occupancy were created at the first settlements, and for the most part on the strength of an actual twelve years' occupancy. It might easily have happened in the preparation of the record that the fact of such twelve years' occupancy was erroneously assumed,' and the words referred to have been inserted in the amendment to give the landlord the power, which is not allowed to him by the Bill, of obtaining the rectification of such errors. There was a clause in the Bill as originally drawn providing a means of setting aside any entry in the settlement record, which could be shown to be at variance with the rules *laid down by the Settlement Officer, and recorded at the time of settlement;* this clause was expunged from the Bill at the suggestion of the Murree Committee in the propriety of which I fully concurred; for, whilst it had the specious appearance of serving the landlord's interest, by its admitting of the correction of such mistakes in the proceedings of the Settlement Officer as that to which I have referred, inasmuch as it is nearly certain that, as a matter of fact, *no rules* in regard to the record of tenant-rights were laid down by the Settlement Officer at the time of settlement, the clause would not have operated to secure the rectification of such errors as are contemplated by the terms of my amendment."

The Motion was then put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Cockerell.	Hon'ble Mr. Taylor.
The Hon'ble Sir G. Couper.	Hon'ble Mr. Maine.
	Hon'ble Mr. Strachey.
	Hon'ble Sir R. Temple.
	Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. COCKERELL then moved that, for the third ground of enhancement in section 11, the following be substituted:—

"That in the case of a tenant belonging to any of the classes specified in clause 2, 3, or 4, of section 5 or section 6, the rate of rent paid by him is, if he belong to any of the classes

specified in clause 2, 3, or 4 of section 5, more than 30 per centum, and if he belong to the class specified in section 6, below the rate of rent usually paid in the neighbourhood by tenants of the same class not having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff, not exceeding such rate or not exceeding such rate less 30 per centum, as the case may be."

He said that the amendment had two objects,—

1st.—To remove from the third ground of enhancement in section 11 of the Bill, the tenants whose status was described in clause 1, section 5;

2nd.—To admit of the enhancement of the rent of tenants having a right of occupancy under section 6, to the full amount paid by tenants of the same class having no such right of occupancy.

It would be observed that the tenants described in clause 1, section 5, already paid the full amount of Government revenue assessed upon the land in their occupancy, plus the village cesses, whatever they might be; and it was stated on the authority of the officers of the Panjáb who constituted the Murree Committee, that tenants without rights of occupancy did not pay rent in excess of double the rate of the Government revenue. Hence the amount already paid by the class of tenants above-mentioned was already in excess (to the extent of the amount of the village cesses) of the higher amount to which they could be subjected under the operation of the Bill. Such being the case, the provision in the Bill in regard to this class of tenants was mere surplusage, and might well be omitted.

In regard to the tenants obtaining a right of occupancy under section 6, he Mr. COCKERELL submitted that there was no ground whatever for the share of the fair rent of the land in their occupancy which it was proposed to assign to them. To give to this inferior class of tenants a quasi-proprietary interest in the land occupied by them was to go far beyond the privilege conferred by Act X of 1859, on tenants whose status was created simply bya continuous occupancy of 12 years. The validation of the right to retain the occupancy of land without the consent of the owner had been defended by the assertion of the expediency of upholding the former settlement record; but that record guaranteed no beneficiary status in the matter of rent, and the provision in this Bill, which accorded such interest, was, in his (Mr. COCKERELL's) opinion, wholly indefensible.

The Hon'ble Mr. STRACHEY:—"The first portion of the Hon'ble Mr. Cockerell's proposed amendment would affect the class of tenants described in the first clause

of the 5th section of the Bill,—tenants who have hitherto never paid any rent, or rendered any service to the nominal proprietor, and who have paid nothing, except the land-revenue to the Government and the village cesses. I think, Sir, that in regard to this class of tenants, my Hon'ble friend, Mr. Cockerell, is, up to a certain point, right in saying that section 11 of the Bill will be inoperative, and that there will be no means of enhancing their rent. But this will only be true in cases in which the Government revenue amounts to half the rent. My Hon'ble friend may be correct in the assumption that, as a general rule, the Government demand will not be less than this amount, but we have no right to take it for granted that this will be always true. It is not only possible, but it is extremely probable, that the Government revenue may sometimes be less than this proportion, and in such cases the rent of the tenant can be enhanced. I confess, however, that personally I should have been very glad if this class of tenants had been treated differently, and I should have desired, on other grounds than those stated by Mr. Cockerell, to protect them against any enhancement of rent. It must be remembered that these people have hitherto paid no rent at all, and have rendered no services to the landlord. I have always thought it to be a serious blot on this Bill that they should be treated as tenants-at-all. They have been, to all intents and purposes, proprietors, and I can see no reason why they should not have been considered under-proprietors, as they would have been in Oudh, with complete rights of property in their holdings.

With regard to the other classes of tenants with rights of occupancy, the limitations put on their rents by the Bill are admitted to be arbitrary. No reason can, I believe, be given for preferring the particular figures stated in the Bill to others that might be proposed, but there has been a very general concurrence of opinion that it is desirable to limit the rent payable by these classes of tenants to an amount considerably less than the rack-rent payable by tenants-at-will, and I think that the allowances made by the Bill in favour of these classes cannot be considered too liberal. My Hon'ble friend, Mr. Cockerell, has, I think, omitted to remember that but for this Bill, there could have been ordinarily no enhancement of the rents payable by these classes of tenants during the whole term of settlement. Even with the advantages secured to them by the Bill, they will be decidedly worse off than they were before. Mr. Cockerell has observed that in the provinces in which Act X of 1859 is in force, a tenant with a right of occupancy may pay as high a rent as that which is paid by a tenant-at-will, and that in that Act there are no such limitations as those laid down in the present Bill. My Hon'ble friend possesses, I have no doubt, a more intimate acquaintance with the working of Act X of 1859

than any to which I can pretend, and he will, I hope, correct me if I am wrong. But it seems to me that he has forgotten one very important difference between the law that is in force in Bengal and in the Panjáb. In the former province, the courts will not give decrees for rents which are not in themselves 'fair and equitable.' The decisions of the High Court of Calcutta, in regard to such questions, are very favourable to tenants, and I doubt whether the provisions of this Bill, in regard to enhancement of the rent of tenants with rights of occupancy, will give advantages to that class equal to those given by the provisions of Act X of 1859, to which Mr. Cockerell has referred."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Mr. Cockerell.	His Excellency the President.
The Hon'ble Sir G. Couper.	His Excellency the Commander-in-Chief.
	The Hon'ble Mr. Taylor.
	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. STRACHEY then moved "that in section 19, the figure "(1)" and the word 'or' be omitted in lines 5 and 6, and that the clause numbered (2) be also omitted." He said—"I have failed to discover justification for this proposition, which authorizes landlords to appropriate to themselves the property of their tenants. Why these unfortunate tenants are to be selected for possible ruin, as if they were public enemies, is more than I can understand. We are deliberately declaring by this Bill that these tenants possess a heritable, and, with certain conditions, a transferable right of property in the land which they occupy. Their interest in the land may sometimes, as was shown just now in the debate on the Hon'ble Mr. Cockerell's proposed amendment to section 11, be quite as valuable as that of the landlord himself. They may have paid no rent in the past, and may be liable to no payment in the future. They will sometimes be in fact proprietors of the land in everything but name, and I can conceive no reason why these rights of property should be liable to be swept away at the will of a perhaps merely nominal landlord. I think that we may advantageously in this matter follow the example which England and other countries have given to us. My Hon'ble friend, Mr. Maine, has referred to the enfranchisement of copy-holds in England, and that subject has been more than once noticed in the papers that have been laid before the Council.

It seems to have been thought by some that this Bill recognized a principle similar to that which has been acted upon in regard to copyhold tenures in England.

There could hardly be a more complete mistake. The Lieutenant Governor of the Panjáb has more than once said, and the Financial Commissioner has stated the same in a passage which I have to-day read to the Council, that the position of the English copyholder to some extent resembled that of our tenants with rights of occupancy. Measures have been taken to relieve the copyholder from the obligations under which he stood to the lord of the manor, but the clause in this Bill to which I am now objecting proposes the exact converse of the measures that have been adopted in England. It proposes, as a learned friend of mine very justly observed, not to enfranchise the copyholder but to enfranchise the lord.

It would, I think, have been altogether proper if the Bill had given power to the hereditary occupier of the land to buy out the rights of the landlord.

A remark to this effect was made by my Hon'ble friend, Mr. Taylor. His Excellency Sir William Mansfield has spoken as if Mr. Taylor had made a somewhat extravagant proposition, but it seems to me that Mr. Taylor really did no more than give his approval to a principle which has been fully accepted and acted upon in England and in other countries of Europe.

My Hon'ble friend, Sir Richard Temple, in his speech on the motion to take this Bill into consideration, spoke as if His Honor the Lieutenant Governor had approved the clause to which I am now objecting. But if I understand His Honor's views correctly, I doubt very much whether he would think it right that this clause should become law, unless further provisions were added for the protection of the tenant. For I find that in remarking on a section in Mr. Brandreth's original Bill, similar in effect to this clause, the Lieutenant Governor stated his opinion that a section ought to be added, giving power to the tenant to buy out the rights of the landlord, if an enhanced rent were demanded from him. If this proposition had been adopted, the effect would have been highly beneficial to the tenants, and it would have added materially to the value of their interests in the land.

I desire also to call the attention of the Council to the remarks on this subject made by the Lieutenant Governor in his Minute of the 13th September 1866. He there said, speaking of certain classes of tenants with rights of occupancy:—'This class of persons, it seems to me, should be regarded very much in the same light as 'copyholders' in England. Those only can claim

this last-named designation whose names have appeared on the court roll 'time out of mind,' and, although this period of incumbency can be claimed by but few in this province, the class to which I refer appears to me to occupy here a very analogous position to the copyholder of England. * * Five statutes at least have been enacted during the present reign to enable copyholders to enfranchise their tenures, or convert them into free-holds, and it would, I think, be exceedingly desirable to hold out similar facilities to this highest class of tenants or sub-proprietors in this country to purchase for themselves the status of proprietors in full.'

This is exactly what I maintain would have been the proper course to follow. Sir Richard Temple spoke as if he believed that if this clause became law, it would remain almost a dead letter. This may be true, but it would not therefore cease to be mischievous. We should have upon the statute book a recognition by the Legislature of a false principle, and one that has been recognized hitherto by no law in any country of which I have ever heard.

I think it very objectionable that the law should seem to encourage the belief that it is desirable to get rid of tenants having permanent interests in the land, and to substitute for them tenants-at-will, liable to ejectment as the landlord may arbitrarily please, and whose rents are limited neither by law nor custom, but depend only on competition. I protest against any legislation which tends to abolish a tenure which is economically good, and to substitute for it a tenure which is economically bad.

When the sacrifice of private interests is necessary for the public benefit, the sacrifice must of course be made. In the present instance, it is proposed to authorize by law an infringement of private rights, not only with no pretence that this is necessary for the public good, but, as it seems to me, in violation of the obvious requirements of public policy."

The Hon'ble Mr. TAYLOR,—"In seconding the motion of Mr. Strachey, I have nothing to add to what I have already said on the subject of the clause to which it relates, except to express my entire concurrence in the objections which my Hon'ble friend has advanced against the novel, and, as it seems to me, unjust principle it seeks to introduce.

I must, however, take the opportunity of saying that Mr. Strachey has exactly stated the position which I advocated in regard to the rights belonging to the proprietor and the hereditary cultivator respectively in relation to the

land. He has very correctly explained the real scope and effect of my proposal to enfranchise the restricted tenure of the ryot, a proposal upon which His Excellency the Commander-in-Chief has put an interpretation which my words were certainly not intended to convey. Nothing can be further from my wish than to weaken or destroy proprietary right, or, as Sir W. Mansfield expressed it, 'to improve the landlord off the face of the land.' On the contrary, my desire is, and always has been, to 'comfort' tenures, and to strengthen rights in land wherever they are found to exist.

I repeat that I regard the tenant-right of the registered cultivator, the occupancy-ryot, or other hereditary holder of land throughout India, as that of co-proprietorship: he shares the proprietary right with the Government in those parts of the country where the direct ryotwary system is in vogue, and he shares it elsewhere with the proprietor, whoever he may be, who is recognized by Government, and to whom he pays the rent. I understand Sir William Mansfield to maintain that this co-proprietary tenure should be destroyed by degrading the hereditary occupier into a tenant-at-will; whereas I contend that it is for the advantage of all parties, and of the country generally, that the restricted tenure of the industrious farmer of the land should be enfranchised in the manner I have described, by the payment of a fine, or compensation to his co-proprietor.

Nor am I unmindful of the superior tenures such as mírásí and others, which exist in some parts of India, to which His Excellency has alluded. In the Minute from which I have already quoted, and which is now before me, I find that I stated several years ago when discussing the various interests connected with the land in India as follows:—'Speaking, generally, the interests of the cultivating or village communities of India are of two kinds,—the first is a transferable interest, constituting a perfect right of property, and is derived from a grant of the sovereign power, whether of a special individual character or consisting of a more general concession in favor of the whole body of cultivators. Of this description are the mírásí tenures in parts of Southern and Western India, where the village communities have claimed from time immemorial the possession of a transferable right of property in the soil.' This description of tenure, though it has very generally disappeared, is still in existence in one small district of the Madras Presidency, and I believe, also in parts of Bombay; and wherever it exists, the rights of the mírásídárs in the waste, as well as in the cultivated, lands are strictly respected by the Government, and they dispose of both by transfer or sale at will. In most other parts of the Empire, this transferable interest is not enjoyed by the

registered cultivators, and the proposal which I have ventured to advocate is that they should be allowed to purchase this right as regards the cultivated lands in their possession."

The Hon'ble Sir R. TEMPLE confessed himself unable to answer Mr. Strachey's arguments about the injustice of compelling tenants of the superior classes or of very old standing to be bought out. But as regards the rest of the occupancy-tenants, the arrangement would be fair enough. He would oppose Mr. Strachey's general amendment, on the understanding that, if it were lost, he (Sir R. TEMPLE) would propose a subordinate amendment, to the effect that tenants of the superior classes and of very old standing should be exempted from the liability to be compulsorily bought out.

His Excellency the COMMANDER-IN-CHIEF :—" When I read this section, I imagined that there had been for the moment a feeling of compunction towards the landlord. It seemed to me that in framing it, a sentiment of compassion had actuated the Committee—a sentiment developing itself in an equitable provision, for it can hardly be denied that this Bill is an occupants' Bill with the single exception of this section, which my Hon'ble friend, Mr. Strachey, would now wish to sweep away. I may cite in support of my opposition to this amendment the opinion of the experienced gentleman who lately officiated as Secretary in the Foreign Department, and is known to be a very staunch advocate of the principles favoured by the Bill.

He says,—

'Although I am in favour of the principle of empowering landlords to buy out hereditary tenants, and the hereditary tenants to buy up the landlord's right under certain fixed conditions, &c., &c.'

The Hon'ble Mr. STRACHEY :—" His Excellency the Commander-in-Chief has quoted the opinion of Mr. Aitchison in favour of this clause of the Bill; but I wish to point out that this opinion was qualified to so great an extent by Mr. Aitchison himself that I am, I think, fairly entitled to claim his authority in support of the views which I have advocated. 'Although,' he said, 'I am in favour of the principle of empowering landlords to buy out hereditary tenants, and hereditary tenants to buy up the landlord's right, under certain fixed conditions, I strongly dissent from the decision of the majority of the Committee embodied in section 22 of the amended Draft Bill. The section as it stands, without a corresponding provision in favour of hereditary tenants, is unjust. There are hundreds of men who under this Bill will be tenants with rights of occupancy, whose position differs little in reality

from that of landowners. They have cultivated the land from time out of mind; they have paid no rent other than the Govermnent revenue; they have paid revenue by *bách* like proprietors; they are occasionally even recorded as entitled to a share of *shámilát* lands in the event of partition. These men, merely from the fact of their having been regarded as *tenants*, whatever that may have meant at the time, will come under all the liabilities of tenants with rights of occupancy under this Bill. Over such men the landlord's right is merely potential, and it is unjust to give a preference to such potential rights over rights of a very valuable kind which have been long actually enjoyed. In such cases if the power to buy up rights is given at all, the tenant with hereditary right should have the power of ridding himself of the landowner's hold on him.'

I think, Sir, that this quotation shows clearly that if Mr. Aitchison's authority be quoted, it must be quoted in support of the views which I have maintained, and not in opposition to them."

His Excellency Sir William Mansfield has spoken as if this Bill were in the nature of a compromise, and as if having given a great deal to the tenants, we ought now to maintain this clause, which has at least the appearance of giving an advantage to the landlords. I cannot admit that such reasons as this ought to influence the Council in its decision. The real question is what is just and proper. And I wish to remind the Council that it has never been pretended by any one that this clause is in accordance with any custom that prevailed in the Panjáb before the British conquest, or with any custom that has grown up since. It is admitted to be an absolute novelty, and it seems to me to be a novelty that is thoroughly unjust and altogether opposed to public policy.

The Hon'ble Mr. COCKERELL said that as a member of the Select Committee on this Bill, he was in a position to state that His Excellency the Commander-in-Chief's conclusion that the 2nd clause of section 19 was designed to be in the nature of a compromise, is perfectly correct. The necessity for some such provision as a counterpoise to the immense advantages which the Bill confers on the tenant, had been consistently maintained from the first; it was introduced into Mr. Brandreth's original Draft Bill on the ground that without it great hardship might be inflicted on the peasant proprietor who had relinquished the cultivation of his land to a tenant and had by so doing suffered adverse rights to spring up, which precluded him from re-entering on such land as an occupant, although the occupancy might be required for the support of his family. The clause stood in its present shape when the Bill after first amendment by

the Select Committee was referred to the Government of the Panjáb. To cancel the provision now would be highly impolitic and unjustifiable, as it constituted the sole compensation which the proposed legislation offers to the landlord for the rights of which it deprived him.

The Hon'ble Mr. MAINE said that he did not intend to support the amendment, but he could not allow the Commander-in-Chief's observation that the Bill was entirely in the interest of the tenant, to pass without remark. Under clause two of section six, no less than 19,000 out of the 46,000 erasures from the settlement record, recently made by the Settlement Officers, would be sustainable; and that was independent of other grounds of rebuttal The compromise, therefore, was on merely numerical principles, not unfair.

His Excellency the COMMANDER-IN-CHIEF said that he was aware of the second sentence in Mr. Aitchison's letter, which he had read more than once. But he had also read the mass of papers which had been laid before the Council, and had been given to them as evidence of the state of things prevailing in the Panjáb prior to the annexation of that Province, and he also bore in mind the denial of rights which had been expressed by those to whom he was unhappily opposed. Now it was clear that if the alleged anarchy had swept away rights in the Panjáb at the time alluded to, that there were no records to refer to, and that there was no vestige of trustworthy custom, it was obvious that the argument held against one side as well as the other, and therefore that Mr. Aitchison's pleading might be dismissed with the other arguments about rights which it was declared were of no avail. But in fact in considering these things, we might fall back on the feeling of equity in dealing with both classes, and this it was that made him use the expressions that the Committee had drafted the section in compunction and in a spirit of compromise towards the proprietors.

The Motion was then put and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Sir R. Temple.
The Hon'ble Colonel Norman.	The Hon'ble F. R. Cockerell.
	The Hon'ble Sir G. Couper.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER moved that in section 34, clauses 1 and 2 be omitted, and that in clause 3 for 'every other,' the word 'any' be substituted. In other words, he said that the right of alienation conferred by the section

on a tenant having a right of occupancy might be struck out. The late Mr. Thomason, who was the first authoritative expounder of the great doctrine of tenant-rights of occupancy, never went so far as to say that those rights were susceptible of alienation. The 'Directions to Settlement Officers' were not at hand to refer to; but he thought His Excellency the President would bear him out when he said that those rights were therein defined to be 'hereditable but not transferable'. And the Committee which were assembled under the express instructions of His Excellency in Council to enquire into and report on the provisions of this Bill, had recorded the following opinion with reference to this section:—"with regard to the right of alienation, the Committee concur in thinking that as the power of alienation so conferred is entirely contrary to existing custom and to the existing law and records of early settelements, it is undesirable to introduce it." And the Hon'ble the Lieutenant Governor of the Panjáb than whom, except His Excellency the President, there was no higher authority on these matters, had remarked that the "Committee had been composed of some of our ablest and most experienced men representing various shades and diversities of opinion. They had considered all matters discussed in the Bill most fully, laboriously and conscientiously, and had, His Honour firmly believed, arrived at conclusions in consonance with the feelings of the people and the interests of justice. His Honour sincerely trusted therefore that these conclusions might be accepted."

He thought then it would not be denied, and that he might safely affirm that, up to this time, the right of alienation on the part of the tenant having a right of occupancy had never existed. By this section it would be created. Now, why should it be created? His Excellency the Commander-in-Chief had, in effect, put the same question, and was informed in reply by the Hon'ble Member who had charge of the Bill that the privilege was extended to superior classes only, and was "most strictly limited." But that was no answer; and as a matter of fact, the privilege was extended to every single tenant who was deemed by the Bill to have a right of occupancy.

He was therefore of opinion that no ground had been shown for the creation of this right in a Bill which purported to be a compromise between the claims of the respective classes of landlord and tenant, especially as its creation would be contrary to the concurrent and earnest advice of all the local officers who were best qualified to form an opinion on the subject.

The Hon'ble Sir R. TEMPLE said that the power complained of was given only to a superior class of tenants, and would be exercised subject to the right of pre-emption conferred on the landlord by the second clause of section 34.

His Excellency the PRESIDENT said that, doubtless no power of alienation was given by the Settlement Directions; but in the cases contemplated by the first and second clauses of section 34, the tenants had nearly a full proprietary right, and might fairly be allowed the power of alienation, subject to the landlord's right of pre-emption.

The Motion was then put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Cockerell.	The Hon'ble Mr. Taylor.
The Hon'ble Sir George Couper.	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER then moved that in section 37, line 1, the words 'at will with his landlord's consent' be inserted after 'tenant,' and the words 'he or' be inserted after 'occupancy' in the second line. In dissenting from the provision that a tenant-at-will should be entitled to compensation for improvements effected without his landlord's consent, he was again merely representing the views of the Committee whose report he had before referred to, and those of the Hon'ble the Lieutenant Governor of the Panjáb, which he had already quoted. Moreover, the terms of the section appeared to him to involve a contradiction. For how could a man be held to be a tenant-at-will who, by the performance of an act without his landlord's consent, could compel the landlord, in his turn, to compensate him for that act before he could evict him or enhance his rent? He ceased to be a tenant-at-will. He became a tenant subject to certain conditions imposed upon his landlord by the Legislature, and he thought it inexpedient that the Legislature should interfere between man and man and impose such conditions. It might be said it would be hard that a hard-working, frugal tenant-at-will, who had expended money or labour on his holding, should be liable to eviction in order that his landlord or another might reap what he had sown. And if the section only prevented this, it might not be objectionable. But it went further, and enabled a thriftless, revengeful tenant-at-will, who had been properly evicted, to bring an action against his landlord for compensation for improvements which might never even have been made at all. It might be said that in such case, the tenant would lose and the landlord would win the suit. But under

no circumstances was a lawsuit a pleasant thing. And there was nothing which a Native of rank, or even of ordinary respectability, more heartily hated than the prospect of having to undergo the risk, the anxiety, and the expense consequent on having to defend a suit. The section, as he had already said, enabled a malignant tenant-at-will to drag his innocent landlord through some portion of this dirt, that is, to entail upon him some amount at least of unnecessary risk, annoyance, and expense. Therefore he would say 'let well alone, do not interfere by legislative enactment in matters which may safely, which had best, be left to be settled by the parties concerned among themselves.' And if a tenant-at-will chooses to expend money or labour on his holding without protecting himself by an agreement, or without taking even the simple and ordinary precaution of obtaining previously the consent of the man at whose will he holds, 'let him abide the consequences of his own folly.'

The Hon'ble Mr. STRACHEY:—"My Hon'ble friend, Sir George Couper, has objected to this section of the Bill entirely on general grounds. He has not asserted, nor, so far as I am informed, has it been asserted by any one that in the matter of tenants' improvements, there are special reasons why the principles laid down in the Bill should not be made applicable to the Panjáb.

Now, so far as the general principle at issue is concerned, it must be remembered that only three months ago the Oudh Rent Act was passed by this Council. The sections in the present Bill, which refer to tenants' improvements, are, with one slight alteration, in favor of the landlord taken *verbatim* from the Oudh Act. There is absolutely nothing in this part of the Bill which has not already received the sanction of the Legislature.

The Council is aware that every part of the Oudh Act was discussed by me and by the present Chief Commissioner and Financial Commissioner with the principal talukdárs. Although there was a great deal of controversy regarding many other parts of the Bill, I can say confidently that in regard to this question of the right of tenants to claim compensation for improvements made by them on the land, there was really no controversy at all. I well remember the most intelligent and the most influential of all the talukdárs of Oudh saying to me that he did not see how there could be any objections to such provisions as these, because it was impossible that the landlord should suffer injury from having his land improved by the tenant. I cannot understand how a reasonable landlord could come to any other conclusion.

Since my Hon'ble friend, Sir George Couper, has raised this question on general grounds, and not on grounds peculiar to India or the Panjáb, I think

that he might have noticed the fact of the almost constant discussions on the subject which have been going on for several years past in the British Parliament. The question of compensation for tenants' improvements has been debated and reported on and written about to such an extent that it is really impossible to say anything new regarding it. I think that no question could be named which has been more completely argued out than this, and that this is true can hardly be better shown than by the fact that both the great parties of the State have practically agreed in regard to the principles on which the question is to be disposed of. In principle, there is hardly any difference between the Bill brought into Parliament in the last Session by the present Conservative Government and that brought in two years ago by Mr. Chichester Fortescue on behalf of the Government of which Mr. Gladstone was the head. I have not got the Bill of the present Session to refer to, but I have no doubt that I am right in saying that it allowed improvements of the character described in section 38 of the Bill now before us to be made by the tenant without the previous consent of the landlord. This principle, indeed, has been so generally admitted, that no future event can well be more certain than this, that whatever party be in power, we shall see before long an Act of Parliament giving to tenants in Ireland authority to make certain classes of improvements on their holdings without asking the previous consent of the landlord.

My Hon'ble friend, Sir George Couper, has spoken as if it were proposed by this Bill to place restrictions on the freedom of contract between landlord and tenant. But, in reality no such restrictions will be imposed. The landlord and the tenant will be free to enter into any agreement that they please in regard to the making of improvements. All that the Bill says is, that if no agreement has been made, it will be assumed that improvements made at the expense of the tenant have been made with the tacit consent of the landlord. It is a matter of simple justice that, in the absence of any agreement to the contrary, a man shall reap the benefit of his own industry, and that the property which he has invested in the improvement of the land, without objection on the part of the landlord, shall not be liable to confiscation if the landlord chooses to commit so gross an act of injustice. My Hon'ble friend has spoken as if claims would be made to the serious injury of the landlord on account of purely imaginary improvements. My answer is that the Bill distinctly declares that no compensation shall be claimable except for *boná fide* improvements, by which the annual letting value of the land is increased; and a landlord can never be called upon to pay to a tenant a farthing more than the additional value which has been actually given to the land by the expenditure by the tenant of his own money and labour. In case of difference between the parties

as to the amount of compensation to which the tenant is fairly entitled, the Bill provides that application may be made to the Court on paper bearing a stamp of eight annas, requesting that the matter may be determined There will be no suit, and the procedure followed will be of the simplest kind possible.

I was not aware, until my Hon'ble friend's amendment was actually proposed, that it was his intention to raise this question. If I had known that this amendment was to come forward, I should have brought with me some papers which would have enabled me to lay before the Council some information of interest in regard to the manner in which even in England, where there is no written law on the subject, tenants practically obtain the benefit of improvements which they have made at their own cost. I happen, however, to have with me a book from which I should like to read a passage in illustration of what I have now said. It contains an account of a case which came before Justices Coleridge and Erle in the Court of Queen's Bench on the 26th November 1861 by way of appeal from a County Court in Derbyshire. The tenant was a yearly tenant on the terms that he should use and cultivate his farm in a good and tenantable manner according to the rules of good husbandry. The tenancy was determined by notice to quit given by the landlord, and the tenant then claimed to recover £50 for drainage works made without the knowledge or consent of the landlord. 'The custom was proved that every out-going tenant should be entitled to claim from the landlord compensation for works, though done without the landlord's knowledge or consent.' It was contended for the landlord that the alleged custom could not be supported as being unreasonable and bad. Mr. Justice Coleridge said—'It seems to me not an unreasonable custom that a tenant who is bound to use the farm in a good and tenantable manner, and according to the rules of good husbandry, should be at liberty to charge his landlord with a portion of the expense of draining the land that requires drainage according to good husbandry, though the drainage be done without the landlord's knowledge or consent.' Mr. Justice Erle said: 'if it be not unreasonable as a contract, I do not see that it is unreasonable as a custom.'

It seems to me, Sir, that these principles, which are those laid down in the present Bill, are principles of obvious justice and of universal application, and I hope that the Council will refuse to agree to the amendment that has been proposed."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Sir George Couper.	All the other Hon'ble Members.

So the Motion was lost.

The Hon'ble Mr. STRACHEY moved that in section 36, lines 4, 5, 7, 8, the words "residing in the village in which such land is situate" and "residing in the same village" be omitted, and that in line 14 for "the same village," the words "the village in which such land is situate" be substituted. He said:—

"This section, as it now stands in the Bill, is based on a decision of the Chief Court of the Panjáb, dated the 5th December last, and it may be considered to represent the view which has been taken by the highest judicial tribunal of the province in regard to the existing law which regulates the succession of hereditary cultivators to rights of occupancy. In proposing my present amendment, I am, therefore in fact, proposing to make a change in the present law, which declares that a collateral heir in the male line can only claim the right of succession if, on the death of the tenant, he is residing in the same village.

Now I do not deny that such a rule as this may formerly have been reasonable enough. When these rights of occupancy were, strictly speaking, no rights at all, and when they often consisted in the mere right to cultivate, there was perhaps nothing very unreasonable in considering that no one ought to succeed to the occupation of the land who was not present in the village and ready to carry on the cultivation. His Excellency the Commander-in-Chief observed with much truth that we ought not to pay more attention to mere custom than the custom may deserve, and that we must base our legislation on more solid foundations. There can be no doubt that the courts of all civilized countries act in accordance with this principle, and refuse to recognize customs which have clearly ceased to be beneficial.

As the old legal maxim says, *malus usus est abolendus*. It seems to me that this maxim may be fairly applied in the present instance. For these rights of occupancy, which were formerly so vague and indefinite, have now become actual rights of property, and, as it has been shown to-day, they may sometimes be actually more valuable than the rights of the nominal proprietor of the land. The tenant may belong to the class which has never paid any rent, or rendered any services to the proprietor, but has paid the Government revenue and the village cesses. In all other parts of India with which I am acquainted, these would be considered the most obvious signs of proprietorship, and indeed it is difficult to see what better signs of proprietorship could be given.

I have been assuming that the rule of succession laid down in the Bill is in accordance with the custom prevailing in the Panjáb, but in reality I do not

understand the Chief Court to have asserted this, and in order that the Council may fully understand the grounds of the Court's decision, I will read a portion of the judgment to which I have referred:—'The law on the subject is contained in paragraph 128 of directions to Settlement Officers, North-Western Provinces, and Clause 13, Section XXI, Part I of the Panjáb Civil Code. The former says that 'sons or their immediate heirs residing with them in the village would succeed;' the latter that the 'next male heir or heirs will succeed to these privileges.' This language of the Code is wide enough to admit of the interpretation that the same rules apply to succession to the rights of hereditary cultivators and to succession to the rights of ownership of land, and the words 'immediate heirs' in the above quotation are rather vague; but the best authorities have held that the succession of collaterals in the male line is limited, and the only question is the extent of the limitation. There has been considerable difference of opinion upon this head, and the point is not without doubt; but the rule laid down in the above quotation from Cust's Revenue Manual, with the qualification that the collaterals must also reside in the same village as the land is situate, seems on the whole to be better supported.'

I think it will be clear from this quotation that I have really proposed no great innovation on existing customs, if indeed there be any innovation at all. I do not think that it can be maintained that when legislation on this subject has become necessary, we ought to declare that the right to succeed to a man's property shall depend on the accident, whether at the time of his death, the natural heir happens to be living in a certain place, and that if he is not living in that place, the property shall pass absolutely to a stranger. Such a law would, I think, be unreasonable and unjust, and I therefore ask your Excellency and the Council to agree to the amendment which I have proposed."

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	The Hon'ble Mr. Maine.
His Excellency the Commander-in-Chief.	The Hon'ble F. R. Cockerell.
The Hon'ble Mr. Taylor.	The Hon'ble Sir George Couper.
The Hon'ble Mr. Strachey.	
The Hon'ble Sir R. Temple.	
The Hon'ble Colonel Norman.	

So the Motion was carried.

His Excellency the COMMANDER-IN-CHIEF said that he had taken note of Sir Richard Temple's statement with respect to the Panjáb Code having

generalised the principle of adoption even in matters to which it was not previously admitted by the custom of the people. There must have been some reason for the custom being against it in this instance. His Excellency submitted that there could be no doubt that there would be great inconvenience in permitting the practice of adoption to apply to cases of succession to rights of occupancy. The Hon'ble Mr. Strachey's amendment had removed one great evil with which the law as hitherto administered had allowed succession to remain encumbered. He, the COMMANDER-IN-CHIEF, in a spirit of fairness to the proprietors, would now go a step further and relieve the law of another *malus usus*. He would therefore, with His Excellency the President's permission, move that the following explanation be added to section 36 :—

"*Explanation.*—The words 'descendants' and 'relatives' in the former part of this section do not include adopted sons."

The Hon'ble Sir R. TEMPLE protested against limiting the right of adoption which every Hindú possessed. No distinction had ever been made, either by usage or by the courts, between the exercise of the power to adopt in cases of succession to an occupancy-right and the exercise of the same power in other cases.

The Hon'ble Mr. STRACHEY expressed his concurrence with the Hon'ble Sir R. Temple.

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Maine.	The Hon'ble Mr. Taylor.
The Hon'ble Mr. Cockerell.	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.
	The Hon'ble Sir George Couper.

So the Motion was lost.

The Hon'ble Sir R. TEMPLE then, with His Excellency the President's permission, moved that to section 19 the following clause be added :—

"Nothing in the last preceding clause shall be deemed to apply to a tenant belonging to any of the classes described in section 5, or to a tenant when he or the person from whom he has inherited shall have continuously occupied such land for thirty years or upwards."

He said that this amendment was intended to prevent injustice arising in the manner averred, with some truth, by Mr. Strachey. If carried, its

result would be that those occupancy-tenants who were of the superior classes, or of ancient standing, could not be bought out at all; and that the others, if they were to be bought out at all, must be arranged with in a reasonable brief time before they become ancient, and thereby entitled to exception.

The Hon'ble Mr. COCKERELL submitted that the amendment proposed by the Hon'ble mover of the Bill was practically the same as that just moved by Mr. Strachey, and vetoed by the Council. So far as we had any means of judging of the effect of this provision, it might be assumed that it would include very nearly, if not absolutely, the whole of the tenants comprehended by section 6. Mr. COCKERELL trusted, therefore, that the Council would not, in the present state of its information on the subject, accept the Hon'ble mover's proposal.

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Mr. Cockerell.
The Hon'ble Sir R. Temple.	The Hon'ble Sir George Couper.
The Hon'ble Colonel Norman.	

So the Motion was carried.

The Hon'ble Mr. COCKERELL asked His Excellency the President to republish the Bill, under the 29th Rule for the Conduct of Business, before the Motion "that the Bill be passed" be put.

He said that he made this request because a most important amendment, the effect of which the Council had not yet had a full opportunity of considering, had been somewhat hurriedly carried at this late hour of the day, and it was highly desirable that those whose interests were most materially concerned by this change in the Bill, should have an opportunity of expressing their views on the matter before the Bill as amended became law.

The Hon'ble Sir R. TEMPLE expressed his hope that the President would not comply with Mr. Cockerell's request. The Bill was urgently needed, and there had been far too much delay already.

The Hon'ble Mr. STRACHEY said that, so far from the Bill having been discussed too little, in his opinion it had been discussed too much. He referred, of course, not to discussions in this Council, but to the discussions that had

taken place in the Panjáb. He thought that, on grounds of political expediency, it was highly necessary that the Bill should become law at once.

His Excellency the PRESIDENT declined to accede to the Hon'ble Mr. Cockerell's request.

The Hon'ble Sir R. TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned to Wednesday, the 28th October 1868.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 20th October 1868.

Govt. Branch Press, Simla.—No. 2080,—2-11-68. 185.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 *Vic., Cap.* 67.

The Council met at Simla on Wednesday, the 28th October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

EVIDENCE BILL.

The Hon'ble Mr. MAINE moved for leave to introduce a Bill to define and amend the Law of Evidence. He said it would probably be sufficient to state that the Bill embodied the draft rules of law which the Indian Law Commissioners had recently prepared on the subject of evidence. There was probably no subject on which a codified law was more wanted in India, and the Commissioners had fully stated in the report which had been circulated to Hon'ble Members, the reasons for all the changes which the Bill proposed to introduce. If he got leave to introduce the Bill, he proposed to ask His Excellency the President to suspend the rules for the conduct of business, and, on their suspension, to introduce the Bill with a view to its publication in the *Gazette*. There was no use in now dilating to any length on the technical subjects comprised in the Bill.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then asked the President to suspend the Rules for the conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. MAINE then introduced the Bill.

GENERAL STAMP BILL.

The Hon'ble Mr. COCKERELL moved for leave to introduce a Bill for imposing Stamp Duties on certain instruments. He said that the Stamp Law was, previous to 1860, spread over various Regulations of the Codes of the three Presidencies, each Presidency having its distinct law on the subject. By Act XXXVI of that year, the subject-matter of those Regulations, together with several new provisions in regard to Stamp Duties, taken from the English Statutes, was reduced into one enactment applicable to the whole of India. The want of any systematic arrangement of details which so strongly characterized the existing Stamp Law—for Act X of 1862 was a mere reproduction, with a few unimportant additions of Act XXXVI of 1860—and which created so much difficulty in ascertaining its requirements, was probably due to this attempted fusion of the substance of the Regulations with the provisions of the English law.

As experience of the working of the consolidated Stamp Act was gained, its marked defect in this respect became so generally admitted and reprehended, that the Government of India, with a view to future legislation on the subject, in a letter of the 30th April 1867, addressed to the several Local Governments from the Financial Department, communicated the following remarks and instructions:—

"3. The Stamp Act (X of 1862) and Schedule A of that Act especially are said generally to be defective in this particular, namely that their provisions are so wanting in clearness and proper arrangement, that the public is unable to understand either wholly, or only after much research, what the duties are that, in the execution of documents, the law requires them to pay.

"4. The object, therefore, of the proposed amendment of the Act is, without any material sacrifice of revenue, so to express and re-arrange the Act and its Schedules as that the public may see at a glance what the duties are which the law requires them to pay.

"5. The best way of attaining to this object would seem to be to appoint local Committees in every large town or chief station of a district, and to direct such Committees to consider and report upon every section or article of the Act which seems to them to require amendment."

Accordingly, Committees were appointed in all the principal towns of British India to consider and report on the question of the amendment of the Stamp Law of India, and all officers who had had experience of the working of the law were requested to express their opinion on the subject.

On two points the general conclusions of the Committees and officers consulted might be said to be unanimous:—

1*st*.—That the Stamp Law must be entirely re-constructed on a simpler and more popular plan, so as to render its provisions intelligible to the community whose ordinary transactions were so materially affected by it.

2*nd*.—That if criminal penalties were to be maintained as a necessary means of protecting the revenue, the power of impounding documents not bearing a proper stamp, which had been vested in Collectors in the Bengal Presidency by Regulation X of 1829, must be revived and conferred on all public officers.

The objections to Act X in regard to the the want of clearness in its provisions had more especial reference to Schedule A. The arrangement of its subject-matter in English alphabetical order, it was urged, was manifestly unsuited to the circumstances of the case; whilst the complicated description of the various instruments liable to Stamp Duty, unaided by any attempt at interpretation, and the circumlocutory expression of the proper stamp to be borne by many of those instruments, were extremely perplexing to the person seeking to ascertain what the law required of him.

When it was considered that the provisions of the law before they could be generally acted on must be translated into several vernacular languages in which the alphabetical indicator became necessarily lost, the chaotic confusion which an arrangement of the contents of the schedule in English alphabetical order must present to the Native mind, might well be conceived. And the difficulty of ascertaining the requirements of the law was greatly enhanced by the circuitous mode of expression of the proper Stamp Duty chargeable on any instrument. As an instance of this, Mr. COCKERELL would take the case of a person wishing to execute an instrument of reconveyance of mortgaged property. After finding, it might be presumed, with some difficulty, the specification of that instrument in the schedule, he learnt that the proper stamp was the same as that for an "Assignment." The same search under difficulties must be gone through to find "Assignment," and on finding it he was informed that if his instrument was "not of the nature specified under the head of Conveyance or Settlement nor specially exempted," but comprised the assignment of "any interest secured by an original deed, instrument or writing on a stamp of value less than Rs. 8," it must bear "the same stamp as the original instrument, and in any other case a stamp of the value of Rs. 8."

A more complex process could hardly be conceived. The person intending to execute the instrument in question must, to ascertain what duty he had to pay, examine no less than four different denominations of instruments specified in the schedule, and if the instrument was in the nature of a conveyance, as, if he held actual possession of the property mortgaged, it certainly would be, he must be left to presume that he had to pay the same duty as would be charged on an instrument of conveyance.

The present Bill aimed at the removal of these anomalies. It had been framed in general accordance with the recommendations of the Committees and officers above referred to. It was a complete reconstruction of the law relating to Stamp Duties. All instruments liable to be stamped were classed according to the amount of duty with which they were chargeable, and, as far as possible, instruments involving similar obligations had been subjected to the same rate of Stamp Duty. The description of instrument which each denomination specified in the schedules was intended to include was explained by a full interpretation clause, and provision was made for the careful translation of the law, under the immediate direction of each Local Government, into the principal vernacular languages of the territories subject to its control.

The most important change in the existing law contemplated by the Bill was in regard to the procedure for the enforcement of penalties.

Under Act X of 1862, the Collector and the Civil Courts were empowered to levy fiscal penalties on instruments not bearing a proper stamp which might be brought before them, and criminal penalties might be adjudged by the Magistrate on prosecution by the Collector. Unless, however, the fact of any instrument having been executed on unstamped or insufficiently stamped paper, transpired in any proceeding before the Collector, no sufficient grounds for prosecuting criminally infringements of the stamp law were obtainable, and consequently, as a matter of fact, such prosecutions were rarely attempted. All public officers, as well as Civil Courts and Collectors, were prohibited by the existing law from receiving in evidence, or otherwise acting on, any documents which might come before them not bearing the proper stamp. When such documents were produced before the Collector or in the Civil Courts, they could be validated by the payment of the penalties above referred to; in all other cases they must be rejected. But the law contained no provision for otherwise vindicating its infringement.

Under all excise laws, the article made liable to the payment of duty was, when such duty was not paid, declared to be contraband and liable to be seized

for the enforcement of the penalties attached to evasion of duty, and such course was deemed justifiable as necessary for the protection of the revenue. The Bill provided for the application of this principle to the case of unstamped or insufficiently stamped instruments. It empowered Civil and Criminal Courts to impound such instruments and send them to the Collector for the prosecution of the offenders, where such course might seem to be necessary for the protection of the revenue, and it placed an absolute obligation upon all registering and other public officers to impound and send to the Collector every instrument not bearing a proper stamp which might be brought before them.

The present scale of Stamp Duties on bonds and conveyances had been generally objected to on the ground of the inequality of the taxation resulting from its irregular gradations of increase of duty, for example, a bond for Rs. 300 required a stamp of Rs. 2 only, but a bond for Rs. 305 must bear a stamp of Rs. 4. Instances of this kind were to be found throughout the present scale of duties chargeable on bonds and conveyances. Under it the percentage of Stamp Duty varied from $1\frac{1}{3}$ to $\frac{1}{5}$ in the case of bonds, and from 2 to $\frac{7}{15}$ in the case of conveyances. The revenue also suffered under this system, for the bond for Rs. 305 was divisible into two bonds of Rs. 200 and Rs. 105, and the aggregate duty chargeable under the scale for such instruments was Rs. 2 only. So, again, a bond for Rs. 11,000 was subject to a Stamp Duty of Rs. 60; but by dividing the amount and executing separate bonds for Rs. 10,000 and 1,000 the aggregate duty payable was reduced from Rs. 60 to Rs. 41 and the revenue lost Rs. 19 by the transaction.

The Bill proposed to substitute a scale more in accordance with the English system, but without adopting the English rates, which were unsuited to the circumstances of this country in which the mass of transactions coming under the operation of the stamp law involved small amounts. The scale provided for an uniform percentage of one-half on the maximum amount of each gradation in the case of bonds, and double that rate for conveyances.

The result of this equalization of the Stamp Duty charges was a reduction of the existing rates on bonds below Rs. 10,000 and of those on conveyances for any amount not exceeding Rs. 15,000, and an increase of such rates in all other cases. On the whole it was probable that the revenue would lose more than it would gain by the proposed alteration of the scale of duties chargeable on these instruments; but looking to the degree of security against evasion of stamp duties through ignorance or fraud which the provisions of the Bill were calculated to afford, Mr. COCKERELL

confidently anticipated that if the Bill became law, whilst it would certainly in many ways be more advantageous and acceptable to the taxpayer than the law which it superseded, it would also prove a financial success.

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL asked the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. COCKERELL then introduced the Bill.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN asked the President's leave to postpone the Motion, of which he had given notice, that the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Indian Forces be referred to a Select Committee.

Leave was granted.

IMPROVEMENT OF LAND (N. W. PROVINCES) BILL.

The Hon'ble Mr. STRACHEY in moving for leave to introduce a Bill to facilitate the improvement of land in the North-Western Provinces, said that he would explain briefly the circumstances which had rendered legislation necessary. The High Court at Agra had decided some time ago that, by the general law of the North-Western Provinces, a tenant, even though he possessed a right of occupancy, was liable to ejectment if he dug a *kachcha* well or planted trees without his landlord's previous consent. Although the High Court felt that it could come to no other conclusion, it was clear from the terms of its decision that it entertained grave doubts as to the reasonableness of the law which it was administering, and he had recently been able to satisfy himself of the correctness of this opinion, having had the advantage of discussing the question with the learned Chief Justice of the High Court, who was now in Simla. There could be no doubt of the hardship caused by the present state of the law. For, consider what a *kachcha* well very frequently was in the North-Western Provinces—a mere hole in the ground, a few feet deep, made at the cost of a few rupees, and without which it would be impossible to obtain any crop. Surely it was unreasonable and impolitic that a tenant with a right of occupancy should be liable to ejectment, liable to forfeiture of his property, for a useful and,

indeed, indispensable act, which by no means implied or asserted a proprietary right in the land. Similar remarks might be made as to planting trees, and Mr. STRACHEY had recently heard of cases of extreme hardship, where the penalty of ejectment had been incurred by tenants having rights of occupancy, who had re-planted mango groves which had been on the ground from time immemorial, and which had either gone to decay, or been blown down by a storm.

Under these circumstances, the Government of the North-Western Provinces were of opinion that legislation was necessary, and the present Bill was accordingly prepared; and it was thought desirable to take this opportunity of assimilating the law of the North-Western Provinces, as regarded tenants' improvements, to the laws on that subject now in force in Oudh and the Panjáb. There was, however, one distinction. While the provisions as to improvements contained in the Acts which had recently been passed for Oudh and the Panjáb were intended merely for the protection of the tenants, it was thought proper in the present Bill to insert corresponding clauses for the protection of the landlord. Accordingly, while the Bill provided that no tenant should be liable to have his lease cancelled or to be ejected merely on account of improvements made by him, and expressly empowered him to make improvements on the land in his occupation, and to claim compensation for such improvements on the determination of his tenancy, or (if he had a right of occupancy) when his landlord sued to eject him, or to enhance his rent, the Bill, on the other hand, empowered the landlord to obtain compensation from a tenant who failed to cultivate his land in a husbandlike manner, and expressly declared that no improvements made by a tenant should be deemed to raise any presumption of his ownership. As to planting trees, the Bill declared that no tenant, not having a right of occupancy, should be entitled, without the landlord's previous consent, to plant any timber trees on the land in his occupation, but that a tenant having a right of occupancy might plant such trees without his landlord's consent. The Bill, however, declared that the rent payable by such tenant for the land so planted, should not be liable to be reduced below the rent which would be payable for such land if it were used for agricultural purposes, and that the rent should be liable to enhancement in the same manner as if the land had continued to be so used.

Following a suggestion of the High Court of the North-Western Provinces, the Bill also provided that where a landlord successfully sued to eject a tenant for bad cultivation, or for planting trees without permission, the

Court need not necessarily inflict the penalty of ejectment, but might instead award to the plaintiff proper pecuniary compensation.

As to the manner in which compensation for tenants' improvements might be claimed and awarded, the provisions of the Bill were identical in principle with those contained in the Oudh Rent Act and in the Panjáb Tenancy Act. Such differences in detail as had been introduced would be found to be in favour of the landlord. The Bill had been generally approved by the Lieutenant Governor, with one exception. That exception was certainly of importance. The Bill, like the Acts which had been recently passed for Oudh and for the Panjáb, provided that the tenant should be entitled to compensation for improvements made by him within the thirty years next before the date of the determination of his tenancy, or the institution of a suit to eject him, or to enhance his rent. This provision was based on the assumption that the tenant would probably have reaped the full benefit of improvements made before the commencement of that term of years. His Honour the Lieutenant Governor, however, was, (Mr. STRACHEY believed), in favour of omitting this limitation. It was thought desirable, since the principle in question had lately been recognized by the legislature on two separate occasions, for the present, at any rate, to let the Bill stand as it was in this respect. The matter would be discussed by the Select Committee, and the Council would have the advantage of considering the views which His Honour would doubtless express on the subject after the publication of the Bill.

The Motion was put and agreed to.

The Hon'ble Mr. STRACHEY then asked the President to suspend the Rules for the Conduct of Business, in order that the Bill might be introduced and published in the *Gazette*.

The PRESIDENT declared the Rules suspended.

The Hon'ble Mr. STRACHEY then introduced the Bill.

The Council then adjourned to Wednesday, the 4th of November 1868.

WHITLEY STOKES.
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 28th October 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 4th November 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN introduced the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

As he had explained to the Council when he obtained leave to introduce the Bill, the existing law for the government of the Native Army was contained in Act XXIX of 1861, as amended by Acts V of 1863 and XXVI of 1865, and certain changes being deemed necessary, it was considered advisable to embody them and the large portions of the existing Acts which it was proposed to be retained in an entirely new Bill, which, if passed, would constitute the entire law for the government of Her Majesty's Native Indian Forces.

All the principal alterations in the existing law were noted in the Statement of Objects and Reasons attached to the Bill, and he did not at present propose to enter into any detailed explanation as to those alterations beyond what was contained in that statement. They had been carefully considered and discussed outside this Council, but the Bill would be published and would of course be open to any improvement that might be deemed desirable by the Select Committee to which he would at a future sitting move that the Bill be referred.

Besides certain changes in substance, the present Bill contained various alterations and, as he (Colonel NORMAN) thought, improvements in point of arrangement and language, calculated, he trusted, to make the Articles more clear and intelligible to the officers who would have to administer them,

and to those soldiers and others who would be subject to them. He (Colonel NORMAN) desired to acknowledge the obligations he was under in the preparation of the Bill to the Judge Advocate General's Department, and especially to Lieutenant Colonel Maisey, who, as Officiating Judge Advocate General at the time, drew out the original draft of the Bill under the orders of His Excellency the Commander-in-Chief, and had since very ably and assiduously assisted him in its elaboration. He (Colonel NORMAN) was also most highly indebted to Mr. Whitley Stokes, who had devoted much time and care to the Bill, and whose suggestions as to arrangement and phraseology had been most valuable.

His Excellency the COMMANDER-IN-CHIEF, by permission of the President, said that, although there was no motion before the Council, he thought it right to say that the several provisions of the Bill had received great attention. The matter indeed had been under consideration now for not less than six years between the several Governments and the respective Commanders-in-Chief. At this stage there was one point only,—the limitation of the power to try by Summary Courts Martial,—to which he deemed it right to invite notice. If no remarks were made upon it, some persons might suppose that the limitation in question would restrict the military powers of the commanding officer. Nothing would be more erroneous. It had been his (the COMMANDER-IN-CHIEF's) duty when in command at Bombay to point out that the mode of applying the powers of such courts was occasionally wrong. Certain commanding officers, not well versed in law, either civil or military, had actually held Summary Courts Martial to try offences against themselves, and even against their own property. And subsequently, since His Excellency had assumed his present command, he had found it necessary to check similar practices in this Presidency. It would be remembered that this kind of Courts was constituted of the officer, by whom it was held. Article 93 of the present Bill accordingly provided expressly that offences by which the convening commanding officer was personally aggrieved and crimes of fraudulent character, should, as a rule, not be tried by Summary Courts Martial without reference made to superior military authority. This was the only limitation on the power referred to, and His Excellency wished the public to understand that the Bill would not in any way diminish proper military powers.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill further to amend the Criminal Procedure of the High Court of Judicature for the North-Western Provinces, said that, though the Bill covered some space, it was merely intended to remove two technical difficulties. The High Court for the

North-Western Provinces possessed two original criminal jurisdictions,—one ordinary, the other extraordinary: European British subjects were triable in the exercise of the former, Natives in the exercise of the latter. Now, it sometimes happened that an European and a Native were jointly charged with an offence, and then the most convenient course would obviously be to try them together. But when an European was tried, the majority of the jury had to be composed of Europeans or Americans, or both, and the procedure was regulated by Act No. XXIV of 1866; when a Native was tried, half the jury was, if he so required, composed of persons not Europeans nor Americans, and the procedure was wholly regulated by the Code of Criminal Procedure. The Bill gave power to try the European and the Native together, but saved the Native's right (if he chose to exercise it) to be tried separately by a jury, of which at least one-half consisted of persons not Europeans nor Americans.

There was another amendment of less importance which the Bill proposed to make. The High Court was subject, in exercise both of its ordinary and of its extraordinary criminal jurisdiction, to the rules of the Code of Criminal Procedure, except in so far as these rules had been modified by Act XXIV of 1866. Of these rules, those prescribing the mode in which Judges should take down evidence were unmodified. They were contained in sections 198 and 364 of the Code. They had been framed for the guidance of Judges from whom there was an appeal, and for this and other reasons they were wholly unsuited to the learned Judges of the High Court. The Bill accordingly proposed to suspend the operation in the High Court of the two sections which he had mentioned, and to enable the Judges to take down the evidence in such manner as the Court might by general rule direct.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then introduced the Bill.

The Council then adjourned to Friday, the 27th November 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 4th November 1868.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 27th November 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Hon'ble H. Sumner Maine.
The Hon'ble Colonel H. W. Norman, C. B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K. C. S. I. of Balrámpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.

The Hon'ble Mahárájá SIR DIRG-BIJAY SINGH made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

The Hon'ble MR. FORBES and the Hon'ble MR. COWIE took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

NATIVE MARRIAGE BILL.

The Hon'ble MR. MAINE moved that the Bill to legalize marriages between certain Natives of India not professing the Christian religion, be referred to a Select Committee with instructions to report in two months. He said—"Sir, this Bill, after leave to introduce it had been given, was published by your Excellency's permission under a suspension of the Rules, so that public opinion might pronounce upon it. It has elicited a good deal of criticism, and if the Council will allow me, I will proceed to notice briefly some of the observations which have been made upon it. But before I do so, I venture to point out how slight an extension of the existing law is involved in the measure, and that it is only the last of a series of steps which have all been taken in the same direction. I imagine it to be known to the Council that, owing to the language of certain Statutes and Charters regulating the jurisdic-

tion of the Indian Courts, the law of their religion became the law applicable to litigants. There being no fundamental law in India, the doctrine thence prevailed (though I should perhaps surprise the Council if I were to state how much doubt attends the point) that the greatest part of the civil rights of the Natives of India is determined by the religion which they profess. It would appear that, about forty years ago, some alarm was excited by the contention that any act which excluded a man from his religious communion entailed the forfeiture of his civil rights. For remedy of this, section 9 of Regulation VII of 1832 was passed, which provided as follows :—

"Whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahommedan persuasion: or where one or more of the parties to the suit shall not be either of the Mahommedan or Hindoo persuasions; the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled."

The language of this provision, it will be seen, is somewhat cumbrous and perplexed, and, moreover, it merely applies to Bengal. Accordingly, the legislature of the day passed Act XXI of 1850, of which section 1 is to this effect—

"So much of any law or usage now in force within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories."

That is the *lex loci* Act of Lord Dalhousie's Government, which is still the charter of religious liberty in India. I myself do not entertain a particle of doubt, and I venture to think that no member of the Council who has read the discussion which preceded the enactment will doubt, that it was the intention of the framers of that Act to make it complete and to relieve from all civil disabilities all dissidents from Native religions. It was meant to condone all offences against religious rule, whether they were acts of omission or of commission. But probably from mistake, probably from attending too exclusively to the immediate question before them which affected only the first generation of dissidents, they left standing the greatest of all disabilities, the disability to contract a lawful marriage. It is incredible to me that, except by an oversight, they should have expressly provided for the protection of the right of inheritance, but should have omitted to provide for the right of contracting marriage, without which inheritance cannot arise. There has been received a petition from the British Indian Association of Bengal, in

which the Association objects not only to the present measure, but to Act XXI of 1850, which they say was passed against the wishes of the Native community. The Council will no doubt attach to the arguments of that petition such weight as it may think fit, but at present I claim the statement as to the *lex loci* Act as an admission that the principle of one includes the principle of the other, and that he who objects to the present Bill must also object to Lord Dalhousie's measure. There is, however, no doubt a defect of the law which has been brought to notice by a portion of the sect of Hindús known as the Brahmos, who celebrate their marriages according to a ritual which they consider purified. An opinion of the Advocate General given on a case stated by them is to the effect that these marriages are invalid, and the offspring of them accordingly illegitimate. I do not dissent from Mr. Cowie's opinion, and, indeed, I do not see how he could have given any other from a purely legal point of view. But it is impossible to have stated a principle of more formidable application. For example, the civil rights of the Sikhs in the Panjáb depend on the rules of their religion, because the Sikhs are considered to come under the description of Hindús within the meaning of the earlier statutes. But are the marriages of Sikhs celebrated with orthodox regularity?—and, if they are, where does orthodoxy begin and where does it end? I have mentioned the Sikhs, not for the purpose of starting this question, but on account of a fact which has become known to me since the Bill was published, and is doubtless known to your Excellency, that the Sikh religion, in itself a modern religion, has a tendency to throw off sub-sects which adopt considerable novelties of doctrine and practice. And in fact it would seem that the same process goes on all over India and even in provinces little affected by education and by the indirect influence of Christianity. The immobility of Native religions, no doubt, exists, but it exists within shifting limits, and there is much more formation of new creeds and practices than *primâ facie* appears. Now to all these new religious communities the legal doctrine of the Advocate General applies. One reason, however, why we should remove the difficulty is that, in my humble judgment, it is entirely of our own creation. It must strike every observant man that, by our introduction of legal ideas and our administration of justice through regular courts, we give a solidity and rigidity to Native usage, which it does not naturally possess. It seems to me that, in order to prevent the monstrous injustice which occasionally results from this process, we must control it by the proper instrument—timely legislation.

Sir, I now proceed to the principal objections which have been raised against the measure. In front of these I place the objection that it does not apply to Christians. Now, Sir, every imputation that this Government intends to establish an inequality between different classes of Her Majesty's subjects

is serious, and therefore I am much indebted to those who have pointed out that this objection rests upon misapprehension. The words which render the Bill inapplicable to persons professing the Christian religion are taken from the Statute 14 & 15 Vic., c. 40, which regulates the civil marriage of Christians in India. It was necessary to keep the two systems of registration apart, since it would generally not be convenient for Native gentlemen and ladies to have recourse to the Registrar appointed under the Statute. But the principle of the present measure is to place Natives as nearly as possible on the same footing as Europeans.

Sir, the next objection—and no doubt this is a more genuine and sincere objection—is that civil marriage is quite modern in Europe, and that India may not be sufficiently advanced to dispense with the necessity of the forms of a religious marriage. The fallacy of the argument does not lie in the misstatement of the fact, but in the application of it, and in the assumption that it has any relevancy to the condition of India. It is true that civil marriage, which was once an universal institution of the Western World, disappeared for several centuries, and was only revived about a hundred years ago by the Emperor Joseph II in the hereditary states of the House of Austria. Probably, the last relics of the absolute obligation of religious marriage are at this moment disappearing in Spain. But the theory which imposed religious marriage in Europe has never had any counterpart in India. In European countries the legislator believed, or professed to believe, that some one religion was true, and could alone impart efficacy to the rites by which marriage was celebrated. That was his justification, whatever it was worth. For the protection of that one religion, and in its interest, he compelled everybody to submit to its ceremonial. But there never has been anything like this in India under the British Government, and whatever were the theory of the Muhammadans, there was nothing like it in their practice. It is a famous saying of a well known French Statesman, that "the law should be atheistic." Well, if the expression be permissible, the law of marriage has in this country always been atheistic, in the sense that it has been perfectly indifferent between several religions of which no two could be true. One may be true, but not two. This peculiarity of Indian law results in the rule that a man may at pleasure desert the religion in which he was born and contract a civil marriage. A Hindú can become a Christian or a Muhammadan, or he may adopt the Fetichism of the Kóls or Sánthals, and he can contract a lawful marriage. But if he stops short of that, as the law stands, marriage is denied to him. Take the case of a Hindú becoming Muhammadan, a kind of conversion which goes on every day of our lives. The convert is compelled by the principles of his new religion to regard the faith of his

ancestors as hateful and contemptible. But if he does not go so far as that, if he retains some tenderness for his old faith, and continues to regard it as not absolutely evil, he is debarred from all share in the fundamental institution of organized civil society. Such a state of the law is unexampled in Europe. Nothing in the Western World has any relevancy towards it or bearing on it.

I now pass to another objection, which is no doubt sincerely advanced. It is said that we are bound to protect the Native religions to the extent of forbidding their adherents to desert them, except for a recognised religion. There is no doubt that there is some sort of indirect protection to Native religions given by this state of the law of marriage in the existing condition of Native society. Now, can we continue this protection? I think we cannot. Take the case of the applicants for the present measure. They say that the ritual to which they must conform, if they wish to contract lawful marriages, is idolatrous. I don't use the word offensively, but merely in the sense in which a lawyer in the High Court is occasionally obliged to speak of the family idol. They say that the existing Hindú ceremonial of marriage implies belief in the existence or power of, and worship addressed to, idols. No doubt there are some of the Brahmos who have as little belief in these beings as the applicants, but still do not object to go through the ritual; and, naturally enough, they exhibit considerable impatience at the scruples of their co-religionists. But that is only a part of the inevitable history of opinion. The first step is to disbelieve; the next to be ashamed of the profession of belief. The applicants allege that their consciences are hurt and injured by joining in a ritual which implies belief in that which they do not believe. Now, can we compel them to submit to this ritual? Sir, nobody can feel more strongly than I do, that we are bound to refrain from interfering with Native religious opinions, simply on the ground that those opinions are not ours, and that we are bound to respect the practices, which are the expression of those opinions, so long as they do not violate decency and public order. That is the condition of our government in this country. I will even go further and say that, where a part of a community come forward and allege that they are the most enlightened members of it, and call on us to forbid a practice which their advanced ideas lead them to think injurious to their civilization, the Government should still be cautious. This is the case of those enlightened gentlemen who ask us to abolish polygamy, both as regards themselves and as regards their less informed co-religionists who do not agree with them. Here the Government of India, acting in concurrence with the Government of his Honour the Lieutenant Governor, has declined to listen to the petition, much as may be said for it. Here, however, we have a very different case. A number of gentlemen come

forward and ask to be relieved from the necessity of submitting to rites against which their own conscience rebels. They do not ask to impose their ideas on others, but to be relieved from a burthen which presses on themselves. Can we refuse the relief? I think we cannot. I think the point is here reached at which it is impossible for us to forget, that we do not ourselves believe in the existence or virtue or power of the beings in whose honour this ritual is constructed. And I say this the more confidently, because I believe that such a doctrine is in the true interest of the sincere believers in Native religions. If we once begin trampling on the rights of conscience, it is very far from certain that the process will continue for the advantage of Native religions. The members of these communities have the strongest reason for maintaining the absolute sacredness of the rights of conscience.

I now pass to a few verbal criticisms, for some of which there is foundation. It is objected that it is doubtful whether, in section 1, clause 2, the word 'unmarried' includes a widow. I do not feel any doubt myself as to the interpretation which a Court would put on the word, but it can be made still clearer in Select Committee. The words "without having been lawfully divorced," in section 8, have also attracted notice, and it has been asked whether the Government is about to propose a law of divorce. The words, I apprehend, must stand, because the measure may possibly apply to sects who have a law of divorce, and, indeed, even among the Brahmos, there are (I am informed) some Muhammadans whom it is not proposed to deprive of any of their privileges, except in so far as they are modified by this measure. So far as concerns the Hindús, there is not, on the part of your Excellency's Government, any intention to propose a law of divorce for them, and I am told that the Brahmos do not consider their sect sufficiently advanced for such a law.

Another objection which requires attention is that the Bill does not compel the Registrar to go to the house of the persons intending to marry. There is nothing to prevent his going, but it is said that he may demand an exorbitant fee as the price of his presence. That may be set right by a provision that he shall attend at the house of the marrying parties, on a fee being paid somewhat in excess of the ordinary fee.

Sir, I now come to a difficulty of which I myself have, from the first, felt the seriousness. When I obtained leave to introduce the Bill, I stated that I was not satisfied with the table of prohibited degrees. It was introduced at the suggestion of the applicants, and represents, I believe, the ideas of educated Hindús of some social position in Bengal. But it does not accord with Muhammadan ideas, and still less with the usage of Hindús beyond Bengal. The petition of the British Indian Association objects to the Bill that it legalizes marriages between members of different castes. The gentlemen

who have joined in that petition have, however, too good legal advice to be ignorant that, though intermarriages between the castes are no doubt improper according to Hindú notions, there has always, and everywhere, been a doubt whether the impropriety amounted to illegality. I am not now speaking of this class of prohibitions, but of the prohibitions in force in large portions of Upper India. These are extremely numerous and complex, and turn not so much on proximity of blood as on tribal relation. The whole subject is one of some interest, and has been lately examined by a member of my own profession, Mr. Maclellan. Reasonable or unreasonable, these prohibitions are tenaciously adhered to by certain of the Natives of Upper India, and would no doubt be enforced by the Courts. The difficulty of constructing a table of prohibited degrees, which would suit all Natives of India, is so enormous, that I am inclined to suggest, for the consideration of the Select Committee, a provision that nobody shall be allowed to marry, under the new law, any man or woman whom she or he might not lawfully have married if the law had not passed. This will enable us to get rid of the schedule altogether. I am the more inclined to recommend this course, because I do not think that the table of prohibited degrees in use in the Western World can be defended on grounds universally applicable. It seems to me that such a table can only be constructed on two sets of principles. Either it may be framed on physiological considerations, or on considerations arising from the feelings, or it may be prejudices, of the community affected. No doubt, our English table is very much more liberal than any that could be framed for India. But it can hardly be said to be constructed on physiological principles, for if it were, I presume a man would be allowed to marry his deceased wife's sister, and it is probable that the marriages of first cousins would be prohibited. Everybody knows that this permission and prohibition are always defended on peculiarities in the social organization of Western society. I will further allege, as a reason for the provision I suggest, that when civil marriage was introduced into England about forty years ago, the area of intermarriage was not enlarged. A man could no more than before marry his deceased wife's sister, nor could a person, ecclesiastically divorced, marry without a special Act of Parliament. European precedents are, therefore, in favour of the course which I am inclined to propose, and which amounts to limiting the measure for the present to the relief of conscience. I do not deny that this change will to some extent diminish the liberality of the Bill, but it removes a very serious difficulty, and I find that the Brahmos themselves do not wish the power of intermarriage to be enlarged, having always confined themselves within the boundaries of the existing laws. I believe too, that our Hon'ble Colleague, the Mahárájá of Balrámpúr, will have his only objection to the Bill removed by this alteration. It is necessary, however, for

me to say that the section I suggest must be very carefully framed. The prohibition of marriage which it will recognise, must not be one dependent on the performance of any religious ceremonial, or the whole measure may be defeated.

Sir, I have to state in conclusion that, in my humble opinion, there can be no worse penalty on improper marriages than the disallowance of such marriages. Such a penalty has almost no characteristic which should distinguish a penalty. As regards those persons who directly join in the supposed offence, it falls on the more scrupulous and leaves the less scrupulous untouched. But in fact it hardly falls on the supposed offenders at all. It is really imposed on the children, who are dishonoured through life for an offence in which they could not possibly have participated. If it be really necessary for us to protect the Native religions by forbidding marriages not celebrated with their rites, it is much better that we should effect this by any direct civil penalty or if necessary criminal penalty, rather than by the disallowance of the marriage."

MR. MAINE then said that three petitions had been presented against the Bill, one from the Parsís, which would probably be met by the concession he had proposed. There was another from the British Indian Association, which was in fact a petition against Act XXI of 1850, and which in effect claimed that the majority of the members of every religious community should have absolute power to compel the minority to follow all received ceremonial. A third petition was from certain Native gentlemen at Bombay, who begged that the Bill might not be proceeded with till they had had an opportunity of stating their objections to it. MR. MAINE would cheerfully have complied with this request, and it would be seen that he had proposed a long date for the Report of the Select Committee, in order that Native opinion might declare itself. But MR. MAINE had brought on the measure in order that it might be discussed by the public in connection with the changes which he had proposed to-day.

The Motion was put and agreed to.

ARTICLES OF WAR BILL.

The Hon'ble COLONEL NORMAN moved that the Bill to consolidate and amend the Articles of War for the Government of Her Majesty's Native Indian Forces, which he had the honour to introduce on the 4th instant, be referred to a Select Committee with instructions to report in two months. He said that the objects and reasons of the Bill had already been explained to the Council; he would not therefore occupy the time of the Council any further.

The Motion was put and agreed to.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble MR. MAINE moved that the Bill further to amend the Criminal Procedure of the High Court of Judicature for the North-Western Provinces, be referred to a Select Committee with instructions to report in a month. He said that, as the law stood, when an European British subject and a Native were jointly charged with an offence, and committed for trial to the High Court for the North-Western Provinces, they must be tried separately, and in each trial a different procedure was followed—the European being tried in exercise of the Court's ordinary, while the Native was tried in exercise of its extraordinary, criminal jurisdiction.

This state of things having been found to cause practical inconvenience, the present Bill had been framed at the desire of the Local Government. The Bill simply enacted that such persons so charged might be tried together and by the same procedure, but gave the Native the option (which it was unlikely he would often exercise) of refusing to be tried by a jury, the majority of which are Europeans or Americans.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to legalize marriages between certain Natives of India not professing the Christian Religion—the Hon'ble Mr. Cockerell, the Hon'ble Sir George Couper, the Hon'ble Mahárájá Sir Dirg-Bijay Singh, and the Hon'ble Messrs. Shaw Stewart, Forbes and the Mover.

On the Bill to consolidate and amend the Articles of War for the Government of Her Majesty's Native Indian Forces—His Excellency the Commander-in-Chief, the Hon'ble Messrs. Maine and Cockerell, the Hon'ble Sir George Couper and the Hon'ble Messrs. Shaw Stewart, Forbes and the Mover.

On the Bill further to amend the Criminal Procedure of the High Court of Judicature for the North-Western Provinces—the Hon'ble Mr. Cockerell, and the Hon'ble Sir George Couper and the Mover.

The Council adjourned till the 4th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 27th November 1868.

Office Supdt. Govt. Printing.—No. 7985 L. C.—28-11-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
The Hon'ble G. Noble Taylor.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Colonel H. W. Norman, C. B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K. C. S. I. of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

The Hon'ble MR. SHAW STEWART took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

EVIDENCE BILL.

The Hon'ble MR. MAINE moved that the Bill to define and amend the Law of Evidence be referred to a Select Committee with instructions to report in two months. He said that the Council were no doubt aware that, on referring a Bill to a Select Committee, what was affirmed was the principle of the measure or the expediency of legislation within the general principles of the measure. This being understood, MR. MAINE did not suppose that the Council would ever seriously think of refusing to refer to a Select Committee a Bill prepared by the Indian Law Commissioners, and therefore he should say very little in commending it to the Council. The consideration of the measure was essentially a consideration of its detail, and to that detail the Select Committee would doubtless give the most careful attention, not, as MR. MAINE hoped, for the purpose of setting its judgment against the judgment of the Commissioners in matters which lay legitimately within the sphere of their great judicial and forensic experience, but for the purpose of seeing

whether their specific proposals required in any way restriction or extension with regard to the special circumstances and facts of this country.

On the general expediency of obtaining a codified law of evidence for India, MR. MAINE did not suppose that there could be two opinions. He ventured to think that the Commissioners had, if anything, rather understated the grounds on which such a law was desirable. They observed that India did not possess any uniform law on the subject. After stating that within the Presidency towns the English law of evidence was in force, modified by certain Acts of the Indian legislature of which Act II of 1855 was the most important, they went on to say that a customary law of evidence prevailed in those parts of British India where English law was not administered. "This customary law," they added—

"has not assumed any definite form; the Mahomedan law, since the enactment of the new Code of Criminal Procedure, has ceased to have any validity in the country courts, even in criminal matters; and those courts have in fact no fixed rules of evidence except those contained in Act II of 1855. They are not required to follow the English law as such, although they are not debarred from following it where they regard it as the most equitable."

On looking, however, at the two Indian Evidence Acts, it would seem that they implied that the English law of evidence, except where they modified it, was in force in the bulk of India, the Mofussil. During the last ten or fifteen years the doctrine that the English law of evidence was *vi propriâ* in force throughout the whole of the country had certainly gained strength, and the habit of applying that law with increasing strictness was gaining ground. No doubt much evidence was received by the Mofussil Courts which the English Courts would not regard as strictly admissible. But MR. MAINE would appeal to Members of Council who had more experience in the Mofussil than he had, his hon'ble friends Sir George Couper and Mr. Cockerell, whether the Judges of those Courts did not as a matter of fact believe that it was their duty to administer the English law of evidence as modified by the Evidence Acts. In particular, MR. MAINE was informed that when a case was argued by a barrister before a Mofussil Judge, and when the English rules of evidence were pressed on his attention, he did practically accept those rules, and admit or reject evidence according to his construction of them.

MR. MAINE could not help regarding this state of things as eminently unsatisfactory. He entirely agreed with the Commissioners that there were parts of the English law of evidence which were not suited to this country. They heard much of the laxity with which evidence was admitted in the Mofussil Courts,

but the truth was that this laxity was to a considerable extent justifiable. The evil, it appeared to MR. MAINE, lay less in admitting evidence which under strict rules of admissibility should be rejected, than in admitting and rejecting evidence without fixed rules to govern admission and rejection. Anything like a capricious administration of the law of evidence was an evil, but it would be an equal, or perhaps even a greater, evil that such strict rules of evidence should be enforced as practically to leave the Court without the materials for a decision. MR. MAINE would venture to state his impression that the fault of substance ordinarily committed by the Mofussil Courts consisted less in lax admission of evidence, than in averting their attention from the evidence really before them, and in conjecturing the facts of the case upon probabilities derived from a consideration of what the Natives of this country would be likely to do under given circumstances. Another objection lay in the necessity which the Mofussil Judges were thus placed under of depending upon English textbooks. There were excellent textbooks of the English law of evidence, but their usefulness consisted more in refreshing knowledge which had been gained by forensic experience, than in teaching knowledge. The Commissioners would appear to be right in supposing that what was wanted for the greatest part of India, was a liberalized version of the English law of evidence, enacted with authority and thus excluding caprice, and superseding the use of text books by compactness and precision.

Another objection which MR. MAINE entertained to the present state of the law might appear to be speculative, but was really of some practical moment. The doctrine that the English law of evidence without authoritative enactment prevailed *vi propriâ* and of its own virtue, was calculated to encourage the notion that rules of evidence constituted a scientific machinery by which truth as to facts and as to men's actions could be ascertained somewhat as physical truths could be ascertained by the processes in use among men of science. There were certain Continental systems of evidence which did make a pretension to include a process of the kind. And perhaps some such theory did pervade the rules of the English law with regard to presumptions, which he was happy to see the Commissioners had discarded. But the English law of evidence as a whole made no claim to be such a system. It was justly regarded by English lawyers as a model of good sense; but it would probably have never come into existence but for one peculiarity of the English judicial administration,—the separation of the judge of law from the judge of fact, of the Judge from the Jury. It consisted mainly of rules of exclusion, that is, of rules for keeping certain kinds of evidence out of sight of the judge of fact. Such a system, MR. MAINE apprehended, could only be justified on two

grounds. First of all, some evidence must be excluded. If all evidence were admitted, nay, even if all relevant evidence were admitted, if everything were let in which tended to throw light on the matters in issue, the Courts would be overwhelmed. Even in England they would break down, and it would be quite impossible for the Courts to discharge their functions in this country with the notorious habit of its Natives of attempting to help on the proof by accumulating everything which has even the remotest bearing on it. It being, then, assumed that, under the actual conditions of judicial enquiry, some sorts of evidence must necessarily be shut out, the English law excluded those descriptions of evidence which were found practically to affect the minds of all men, except those of the most sagacious judgment, out of all proportion to the real value of such evidence. This was the case of the great department known to English lawyers as 'hearsay.' It was not at all meant that hearsay evidence was not incidentally valuable, and MR. MAINE could well imagine a great Indian statesman conducted in an emergency to a most important conclusion by evidence which a court of justice would reject as absolutely inadmissible. But, taking men as you found them, and taking the average of judicial ability, it was really true that some kinds of evidence did produce an impression on the mind far deeper than was consistent with their real weight. The good sense to which the English law laid claim was evinced by the tests which it laid down for distinguishing those kinds of evidence from those which remained. It would be presumptuous in MR. MAINE to praise the Commissioners' proposals, but he ventured to say that, in his humble opinion, they had wisely availed themselves of the results of English experience, but had wisely modified those results upon two considerations, which they stated as follows :—

"The English practice has been moulded in a great degree by our social and legal institutions and our forms of procedure; and much of it is admitted to be unsuited to the various states of society and the different forms of property which are to be met with in India."

"In a country like India, where the task of judicial investigation is attended with peculiar difficulties, and where it is the duty of the Judge in all civil and in some criminal cases to decide without a jury, there is greater danger of miscarriage from the mind of the Court being uninformed than from its being unduly influenced by the information laid before it."

MR. MAINE had said that he would not comment on the details of the measure, but there was one point of detail which it was necessary to notice, because, as it involved a financial question, the Select Committee would probably not like to deal with it without knowing the opinion of the Executive Government. The Commissioners' draft and the Bill based upon it saved the Registration Act; but it would be observed that they did not refer to the Stamp Act. The

omission in the Bill was explained by its being doubtful whether the Stamp Bill now in the hands of Mr. Cockerell would or would not receive the assent of the Governor General before the present measure. If the Stamp Bill were passed last, it would control the present measure. But another reason must probably be assigned for the omission in the Commissioners' draft, which appeared to be deliberate. MR. MAINE found that the last paragraph of their third Report, on the Law of Negotiable Instruments, was to the following effect:—

"Negotiable instruments have recently been subjected to a stamp duty in British India by an Act which, like the English Stamp Act, renders instruments invalid if its regulations are not observed. This provision of the English Stamp Act has led to the establishment of several rules and distinctions not unattended with inconvenience, and we would suggest that a law which merely imposed a penalty in case of infringement would be more conducive to the public interests. For the present, we have thought it our best course to frame our rules irrespectively of the stamp law."

Now from the Commissioners' point of view, which was the purely juridical point of view, there was no doubt that simplicity would be attained by the course proposed. But what would be the practical effect? His hon'ble friend Mr. Cockerell had had a vast mass of papers before him relating to the operation of the Stamp law. MR. MAINE appealed to him whether the following was not a fair inference from those papers. If effect were given to the Commissioners' suggestion, either there would be an enormous evasion of the law, or that evasion would be prevented by recourse to the criminal Courts for the enforcement of penalties to an extent which would itself be a greater evil than the sacrifice of any branch of revenue. Under those circumstances, the point had been considered by the Executive Government, and MR. MAINE had to state that, having regard to the fact that the stamp duties on commercial instruments were easily levied, and did not press hardly on the people, the Government was not prepared to give up that portion of the public receipts.

The Motion was put and agreed to.

DIVORCE BILL.

The Hon'ble MR. MAINE also moved that the Hon'ble Sir George Couper and the Hon'ble Messrs. Gordon Forbes and Shaw Stewart be added to the Select Committee on the Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England. He said that though this matter did not permit any discussion, he would, with His Excellency's permission, explain that the Committee had made a preliminary report at Simla recommending the subject for further consideration at Calcutta. The amended Bill had in fact

been sent to the learned Judges of the High Courts, from whom valuable suggestions might possibly be received. There was, however, one imperative reason why the Committee should sit again. The operation of the amended Bill was confined to cases where the husband was a Christian whose marriage had been solemnized in India and who at the date of the marriage had his domicile in India and retained that domicile down to the institution of the suit. This limitation was occasioned by what, when the Committee reported, was believed to be the state of the English law. The balance of legal opinion certainly inclined to the view that the English Courts would not recognise divorces pronounced by foreign courts where the parties had contracted marriage in England. But this doctrine had recently been disturbed by a decision of the House of Lords, which, as was often the case in English law, had come as a surprise on the legal profession. The Select Committee would have carefully to consider the judgment of Lord Westbury in *Shaw* v. *Gould*, 3 Law Reports, English and Irish Appeals, p. 80, and would probably be of opinion that the measure might be made applicable to classes who, as the measure was at present framed, were excluded from its operation.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define and amend the Law of Evidence—The Hon'ble Mr. Cockerell, the Hon'ble Sir George Couper, and the Hon'ble Messrs. Gordon Forbes, Shaw Stewart and the Mover.

The Council adjourned till the 11th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 4th December 1868.

Office Supdt. Govt. Printing.—No. 8855 L. C.—5-12-68.—150.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble Colonel H. W. Norman, C. B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K.C.S.I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

The Hon'ble MR. BULLEN took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL moved that the Bill for imposing stamp duties on certain instruments be referred to a Select Committee with instructions to report in two months. He said that the Bill, it would be seen, contemplated an entire reconstruction of the existing law relating to stamp duties. When he obtained leave to introduce the Bill he had explained generally the principal alterations in the law which were proposed: summarized they were 1st, a complete re-arrangement and simplification of the provisions of the existing law relating to the imposition and realization of stamp duties; 2nd, the extension of the powers of the Civil Courts and public officers in dealing with unstamped and insufficiently stamped documents; and, 3rd, the classification of *ad valorem* stamp duties. In regard to the first of these heads he had explained that the evidence as to the general unpopularity of the

existing law by reason of the complicated nature of its provisions and the difficulty which many persons experienced in ascertaining what the law required at their hands was overwhelming, and that the main object of the present legislation was rather to simplify the law and make it intelligible to the community, than to secure any material increase of stamp-revenue. Whether this Bill, which had now been published for some weeks, was calculated to attain that object sufficiently, or how far the process of simplification might be extended, were matters for the consideration of a Select Committee, to which he hoped the Council would agree to refer the Bill; but he apprehended that, at all events, the very imperfect arrangement of the present law was an undisputed fact, and that it would be admitted that the law needed a thorough reformation in this respect.

As regards unstamped instruments liable to stamp duty he had explained that the provisions of the law for the enforcement of criminal penalties were found to be insufficient for the protection of the stamp-revenue; and that it would be necessary to extend the powers of the Civil Courts in dealing with documents not bearing a proper stamp.

He was not at that time aware that the expediency of maintaining invalidation, as regards their reception in evidence, of unstamped documents, and thereby making use of the agency of the Courts for the protection of the stamp-revenue, was practically ignored by the Bill for defining the law of evidence which was referred to a Select Committee at the last meeting of the Council. The Hon'ble mover of that Bill had stated that, in the opinion of Government, the security which the existing system afforded for the realization of the stamp-revenue could not be abandoned, and he in a manner referred to him (Mr. Cockerell) as having been engaged in enquiries into the working of the existing stamp law for the corroboration of that view. Mr. Cockerell was quite certain that he was justified by the facts which he had ascertained in the course of his enquiries into the working of the stamp law in asserting that the protection which was derived from the existing provision for the invalidation in evidence of unstamped or insufficiently stamped documents could not be dispensed with. Previous to the enactment of Act XXVI of 1867 the annual income from stamp duties amounted to about £2,000,000; about half of that sum, or £1,000,000 was realized from stamps on judicial proceedings, or what was more properly termed Court fees. Of the amount accruing from general stamps, to which alone this Bill was applicable, £200,000 were the proceeds of duty chargeable on bills of exchange and receipts, which class of documents could not be validated by

after-stamping. Of the remaining £800,000 no less than £120,000 were realized in the form of deficient duty and penalties levied through the action of the Civil Courts; that was to say, fifteen per cent. of the revenue obtained from documents of the class which, if not properly stamped, could be received in evidence or acted on only after payment of the deficient duty and prescribed penalties, was collected through the direct agency of the Courts. He had therefore no hesitation in saying that it would be a very serious risk to the interests of the stamp-revenue to forego the protection which the present system afforded.

The necessary inference from the fact of so large a percentage of the stamp-revenue being realized through the action of the Courts was that the stamp duties were largely evaded, and that if the protection afforded by that action was to be withdrawn, there would be hardly any check to the increase of such evasions, and the loss of revenue consequent thereon.

For, the loss to be apprehended was not to be measured simply by the amount now realized through the action of the Courts. He argued that if the risk which the present law attached to the execution of instruments not bearing a proper stamp was withdrawn, it would no longer be to the interest of the public to attend to the provisions of the law; that was to say, if a bond debt could be recovered by a suit founded on an unstamped instrument, it was reasonable to assume that persons executing a bond would not be likely to incur the expense of providing a stamp at the time of execution. It had been supposed, however, that the injury to the revenue could be remedied by the provision of more stringent criminal penalties for the evasion of stamp duties.

The extension of the powers of the Courts and public officers in dealing with improperly stamped instruments for the express purpose of facilitating the enforcement of criminal penalties was an important part of the Bill under consideration.

There was no lack of provision of sufficiently severe criminal penalties for proved evasions of stamp duty under the present law, but the difficulty attending their enforcement had been found to render them practically inoperative. As the only remedy for this state of things, the Bill proposed to vest the Courts and public officers with the power of impounding unstamped instruments produced before them which would render the parties thereto subject to criminal prosecution, but if the Courts were no longer bound to take judicial cognizance of unstamped or insufficiently stamped documents, it would be useless to invest them with this power, because the fact of the instruments not bearing proper

stamps would in all probability not become known to the Court, and the power of attachment consequently would not be exercised.

Under the present system, the question of any document produced in a Court bearing the proper stamp was raised on the motion of some party to the suit whose interests were affected by its legal validity, but if the invalidating status ceased to be recognized, it was no longer a matter of concern to any person who was not responsible for the interests of the revenue whether the document produced was or was not properly stamped, and the disclosure of evasions of stamp duty through the action of the Courts would, it was to be apprehended, under such circumstances, be of rare occurrence.

The reasons which had dictated the provision of this Bill for extending the powers of the Courts in dealing with unstamped documents seemed to apply with double force to the maintenance of the existing provision of the law, by which the Courts were restricted from taking judicial cognizance of such instruments. He trusted therefore that the invalidation of improperly stamped instruments which had in this presidency been prescribed by the law in force for the past forty years and upwards, and which the present Bill proposed to secure, would on no account be discontinued.

The proposed scale for the equalization of *ad valorem* stamp duties had been framed as nearly as possible on the model of the English system. Indian rates were doubtless much higher than the rates prevailing in England; but then it must be recollected that the mass of transactions in this country involved much smaller amounts than general transactions in England, and that the reduction of the Indian, to the standard of the English, rates might result in a very serious sacrifice of revenue which the State could not afford to bear.

Moreover, if the English standard of rates was to be adopted, it must be wholly adopted, and this would have the effect of largely increasing the stamp duty chargeable on transactions of small amount, and be consequently oppressive to the very classes which in any scheme of taxation it was the policy of the State to relieve. In England the lowest rate of stamp duty chargeable was 1*s.* 3*d.*, which was equivalent to 10 annas; whereas the starting point in the scale propounded by the Bill was 4 annas; and when he stated to the Council that in Bengal no less than $\frac{1}{3}$rd, and in Madras and Bombay $\frac{1}{4}$th, of the entire stamp-revenue was realized from the stamps of denominations not exceeding 8 annas' value, it would be easily conceived that the adoption of the English rates of stamp duty, whilst it would very probably entail a considerable loss of revenue, might at the same time impose a greater burden of taxation on the poorer classes of the community.

At all events it would be such a complete alteration of the existing law as he was not prepared to recommend. The equalizing process had been so carried out as not to disturb very materially the existing rates; they had been increased considerably in some instances where the subject-matter of the instrument chargeable with stamp duty involved an amount exceeding Rs. 10,000, and on instruments involving a less amount the existing rates were more or less reduced. The net result was undoubtedly in favour of the tax-payer, and especially so as regarded the poorer classes thereof. The scale proposed by the Bill provided an uniform percentage of duty chargeable alike on transactions of large as of small amount, in accordance with the principle on which the scale of *ad valorem* duties was adjusted under the English stamp law.

He now came to the detail alterations of the law which the Bill contemplated, and which he would endeavour to explain as briefly as possible. By the fourth section of the Bill an ambiguity which attached to the existing law was removed. It had been frequently contended that the language of the 2nd section of Act X of 1862, which provided that—

"for every deed, instrument, or writing which shall be executed from the time when this Act shall come into force, and which shall be of any of the kinds specified as requiring stamps by the schedule annexed to this Act, there shall be payable to Government a stamp duty of the amount indicated in the said schedule to be proper for such deed, instrument or writing—"

excluded instruments executed out of British India; the words had been understood to mean "which should be executed in British India." He did not know what reason there was for supposing that the framers of the law intended to restrict its operation to documents executed in India. Such was not the practice obtaining under the English stamp law. By it deeds executed beyond Great Britain were required to bear the proper stamp duty on being made use of in England. The present Bill therefore proposed to leave no doubt on this point as to the intentions of the legislature; it explained that where deeds executed out of British India were made use of within those territories they must bear the stamp required by the Indian law.

By the 3rd clause of section 4 it was provided that an instrument executed out of India before, but becoming obligatory therein after the passing of the Bill should bear the stamp duty required by it. This had been objected to as an instance of *ex post facto* legislation and therefore indefensible in principle. He did not think that this objection could be deemed to have any force in its application to the case in point, since no hardship resulted to the executant of the instrument when no penalty or disability could attach in consequence of not properly stamping the document at the time of its execution,

and special provision had been made in section 22 by which an instrument executed out of British India, if brought within two months from its receipt into this country, could be stamped without penalty.

The fifth section of the present Bill laid down how stamp duties were to be levied on different classes of documents. There was no specific provision of this kind in the existing law, and that seemed to be an omission which it had been thought fit to supply. Section 6 also laid down rules for fixing the obligation of bearing the expense of any stamp prescribed by the three first schedules; these rules would be found, he believed, to be in accordance not only with the English law, but also with the general practice in this country.

It was not possible to lay down any rules on this subject in respect to the stamps mentioned in the 4th schedule, but as those stamps were all of inconsiderable amount, the question of providing the expense of such stamps might be, without inconvenience, left to the determination of the parties to the instruments on which they were chargeable.

Section 8 proposed some material alteration of the existing law and practice in regard to the mode of levying stamp duties on bills of exchange, and he had no doubt that this was a matter on which the Hon'ble Members of Council who represented the mercantile community would have some objection to urge. Since the publication of the Bill, MR. COCKERELL had been informed that the contemplated alteration was not likely to work well, and he himself had certainly great doubts in the matter. The existing practice was to distribute the stamp duty on bills drawn in sets over each part of the set. Well, it had been thought that, both for the convenience of the public and the protection of the revenue, it would be advantageous if adhesive stamps could be applied to such documents in lieu of impressed stamps. The Hon'ble Member of this Council who had special charge of the administration of the Financial Department could probably corroborate his statement that there had been a good deal of correspondence from time to time in regard to the mode of stamping bills of exchange, and that the practice had undergone much variation. It was a question beset with much difficulty, and would require the careful consideration of the Select Committee. At present MR. COCKERELL understood the practice to be to apply adhesive stamps, and impress those adhesive stamps for the purpose of obliteration with a plain die. That was in substitution for the former practice of stamping with a plain die. He was sure that it was the wish of the Government of India to meet the convenience of bill-drawers consistently with the due protection of the interests of the stamp-revenue.

If it were thought that the practice obtaining under the existing law would be more generally convenient than the provision laid down in the Bill, there would, he believed, be no objection to maintain that practice.

In the fifteenth section of the Bill an alteration was made in regard to instruments executed by or on behalf of Government. That was a point on which difficulties had been found in the working of the existing law. Every person whose transactions with Government involved the execution of an instrument liable to stamp duty claimed exemption from such duty on the ground that, as the Government was a party to such instrument, it was, constructively at least, executed on it's behalf. He contended that such was not the intention of the legislature; the instrument was only properly exempted from stamp duty when, but for such exemption, the Government would be bound to provide the expense of such stamp. There was no ground for exempting a person dealing with Government from the obligation of providing the expense of the stamp required for the instrument executed in relation to such dealing which would have unquestionably attached to such person had the instrument been executed in pursuance of his transactions with any other party than Government: the clause had therefore been worded so as to exclude only those instruments for which the Government would be bound, if it were a private party, to provide the stamp.

The civil penalties provided in the 18th section were somewhat in amendment of the existing law. The present law made several distinctions in the amount of penalty to be levied, accordingly as the improperly stamped instrument might be brought to the Collector or the Civil Court within six weeks, four months, or beyond four months from the date of it's execution. These minute distinctions seemed to rest on no recognized principle, and were not to be found in the English law. The Bill therefore contemplated the substitution of two grades of penalties for the fluctuating penalties of the existing law, and the adoption, as the period of grace within which a purely accidental omission to affix the proper stamp to any document might be rectified without the levy of any penalty, of the one year allowed by the English law in such cases.

The power of impounding unstamped documents given by sections 20 and 21 he had already adverted to; it would be found necessary to facilitate criminal prosecutions. The objection to the existing law was that criminal penalties could not be enforced, because it was difficult, in the absence of any power of seizing the unstamped instrument, to obtain sufficient grounds for the institution of criminal prosecutions.

The exercise of the power of attaching such documents was made compulsory in certain cases and discretionary in others; this distinction was made for the purpose of obviating possible obstructions to the administration of justice which might result if the Courts were bound to impound every instrument not bearing a proper stamp tendered in evidence or otherwise brought before them.

Section 32, clause 2, was taken from the English law; it laid down that where property was sold subject to a mortgage, the amount of that mortgage should, for the purpose of determining the proper stamp duty chargeable on the conveyance, be taken as part of the consideration money.

This had been objected to, but he thought that the provision was justified by certain other provisions to be found in another part of the Bill under which instruments for the re-conveyance, or purporting to surrender an equity of redemption, of mortgaged property, would be subjected to a mere nominal stamp duty instead of the rates charged, as for a regular conveyance under the existing law.

The 33rd section of the Bill was in substitution of clause 2, section 51, of the existing law, which merely stated generally that any person wilfully inserting in a conveyance a less sum than the amount of the purchase money should be liable to a certain penalty. No doubt that was intended to apply especially to persons employed professionally in the preparation of instruments liable to stamp duty, who were most likely to have the opportunity of making such insertions. The present Bill laid down that such persons, who might be supposed to have a better knowledge than others of the requirements of the law, should undergo more severe penalties than those prescribed by the existing law for offences of this description.

An important alteration was also contained in the clauses relating to the adjudication of doubts as to the proper stamp to be borne by any instrument. The provisions of the existing law on this subject worked unsatisfactorily; they involved a reference to the chief controlling revenue authority, and there was a great deal of expense, loss of time, and risk of injury to documents *in transitu* entailed by such references; and the consequence was that they were rarely put in force.

The necessity for an improved mode of obtaining adjudications in such cases was fully recognized in the Bill, which had adopted the provisions of the English Statute 13 & 14 Vic., cap. 97, sections 14 and 15.

The appellate jurisdiction of the chief controlling revenue authority conferred by section 38 of the Bill was somewhat in extension of that obtaining under the existing law, the provisions of which, in this respect, were rather conflicting ; for instance, by clause 5, section 15 of Act X of 1862, an appeal from the Collector's order in regard to the proper stamp to be borne by any instrument was allowed to the chief controlling revenue authority only when the stamp fixed by the Collector had not been impressed on the instrument adjudged liable to bear it ; whereas by section 35 the only exceptions to the power of appeal against the Collector's order were cases in which refund of stamp duty had been granted or refused on the presentation of spoiled stamps, and the Collector's decision as to whether the after-stamping of an instrument executed on paper not bearing a proper stamp should or should not be allowed.

There seemed to be no ground for excluding the orders of the Collector, which were excepted by the existing law, from the control of the chief revenue authority, and the Bill therefore extended the latter's appellate jurisdiction to all orders by the Collector.

The Bill also proposed to confer on the same authority a general power of remission or mitigation of penalties imposed for infringements of the stamp law. This had been objected to on the ground that it was impolitic to vest the chief revenue authority, which was a purely executive authority, with appellate jurisdiction over the decisions of judicial tribunals. The answer to this was that the objection proceeded on a misconception of the nature of the jurisdiction which the Bill conferred on the chief revenue authority. That jurisdiction was not of an appellate character ; the revenue authority in the exercise of it did not call into question the correctness of the decision of any Court by which a penalty was imposed for a breach of the stamp law, but simply determined whether in the case in question the interests of the revenue required the retention of the penalty inflicted, or admitted of its remission or mitigation.

The 43rd section of the Bill enlarged the power of refund of duty allowed by the existing law to purchasers of stamped papers. The law required that the paper must have been in some way spoiled and rendered unfit for its purpose to entitle the purchaser or holder of it to a refund of its value. The Bill provided for granting refund on the production of stamped papers not required by the holders, although the papers might not have been in any way spoiled. The same result might be indirectly obtained under the present system, *i. e.*, the holder of a stamped paper, who did not require it, and desired to recover its value, might always attain his object by rendering the stamped paper unfit

for use, and thus bringing his claim to a refund of its value within the conditions of the law. It seemed desirable to remedy this state of things, and also to provide for the withdrawal of the power of sale of stamped papers by other than a licensed or duly authorized vendor, should such withdrawal be deemed advisable in the rules regarding the sale of stamps to be framed under section 46 of this Bill.

The provision of the 45th section was taken from an old English Statute (48 Geo. 3, cap. 149); it was designed to protect the revenue in regard to the statement of the true consideration money in a conveyance, by allowing the purchaser, in the event of the full consideration money not being stated in such conveyance, to recover as much as he had paid in excess of the declared amount. The object was to prevent collusion—to create that amount of distrust between the parties to the conveyance which would prevent their acting in concert to defraud the revenue. It might be objected to this that, as the purchaser was bound to provide the expense of the stamp, he might ultimately benefit by his own fraud; but it was clear that the fraud could only take place through the connivance of the seller.

The provision of the 46th section was in substitution of the detailed rules regarding the sale of stamps in the existing law; those rules, it appeared from all the reports received, worked with different success in different places, and it was impossible that any one set of rules should be applicable to the circumstances of all the provinces of the Empire. It seemed therefore better to reserve to each Local Government, subject to the general control of the Government of India, the power of framing such rules regarding the sale of stamps as seemed applicable to the provinces under its control.

Schedule A of the existing law had been divided into four schedules. The object of this division was to simplify the law as much as possible by a distinct classification of all instruments liable to stamp duty, by means of which persons about to execute any such instrument might readily ascertain the stamp duty required on any particular instrument.

If it were possible to attain that object in some better way, MR. COCKERELL would have no objection to any amendment in that direction; according to the present arrangement of the Bill, all documents to which adhesive stamps might be applied were classed together, all other instruments subject to *ad valorem* duties had been placed in separate schedules according to the rate of duties chargeable, and all instruments subject to fixed stamp duties were placed in a distinct schedule. In regard to the details of the first schedule, the rates

on bills of exchange were the same as under the present law, except that on the higher amounts a slight increase had resulted from the process of equalization; this was in a measure, however, compensated by the reduction of the amount of each ascent in the scale between the sums of Rs. 1,000 and Rs. 50,000. On the whole it was probable that the bill-drawer would rather profit than lose by the proposed alteration of the scale.

All policies of insurance had been included under one head, without any distinction on the ground of the amount of premium thereon, and subjected to the same rates of stamp duty as bills of exchange, and as regards many of them the effect was to increase the duty now charged about 50 per cent. By the English law bills of exchange and policies of insurance were subject to similar rates of duty. Bills of exchange in this country had always been subject to a duty of 50 per cent. in excess of the rates obtaining in England; the proposed increase therefore was consistent with the relative proportion of Indian to English rates prevailing in regard to other instruments. There might, however, be objections to the proposed increase of which he was not at present aware; and it would therefore be a matter for the consideration of the Select Committee.

A good deal of objection had been made to the proposed alteration in the third article of this schedule, *viz.*, the stamp duty on transfers in shares. Under the existing law these beneficial rates of stamp duty as compared with that chargeable on other conveyances extended to transfers by deed as well as by endorsement. The Bill proposed to limit such rates to the latter. To this it had been objected that transfers of shares were largely effected by deeds, and that the effect of the exclusion of such transfers from the beneficial rates of stamp duty might be the gradual abandonment of such forms of transfer; a result not to be desired. There might be some ground for this objection, but it would be seen that there was some compensation provided by the proposed change. Under the present law every transfer was charged with stamp duty on the market value of the shares, and the result was that, when a transfer was made from one set of trustees to another, the stamp duty was paid, although the transfer was purely nominal: under the proposed law, therefore, there being no consideration, the transfer would not be subject to stamp duty. Moreover, the English law made no distinction between the sale or transfer of shares, and other conveyances of property, as regards the stamp duty chargeable on such instruments.

There were some other alterations of minor importance to which it was perhaps unnecessary to make particular reference. A distinction had been

drawn between instruments effecting a mortgage with transfer of possession of property, and mortgage without such transfer of possession; in the former cases the duty, which was on the sum so bound, had been raised to that of a conveyance. Leases had been classed with bonds and conveyances, accordingly as the leases were for a term of one year or in excess of one year. Some objection had been taken to subjecting leases to the same duty as conveyances, but the Bill really made no material alteration in the rates of duty chargeable on leases; as in the case of the equalization of the duties on bonds and conveyances, so here the change effected by the Bill was really in favour of the lessees of property of small amount, or value.

The Hon'ble MR. BULLEN said, that he presumed the Hon'ble Mr. Cowie and himself would be placed on the Select Committee to which the Bill would be referred; he would not therefore take up the time of the Council at present, as his (MR. BULLEN'S) objections were to the details of the Bill. He would now merely remark that section 8 of the Bill to which the Hon'ble mover had made special reference, had been drawn in entire ignorance of the usual course of dealing with bills of exchange.

The Hon'ble MR. COWIE said, he had already received intimation that his name would be included in the Select Committee, and he would therefore refrain from making any remarks at present.

The Hon'ble SIR RICHARD TEMPLE said that, as this Bill immediately concerned the Financial Department, he had been in constant communication regarding it with the Hon'ble mover (Mr. Cockerell), and could, therefore, bear witness to the care, skill and ability which his hon'ble friend had brought to bear on this important subject; and he would further acknowledge the assistance received on this occasion—as on so many other occasions—from the labours of the Secretary to the Council (Mr. Whitley Stokes).

He (SIR RICHARD TEMPLE) had heard of an apprehension being entertained by some that this Bill would increase the taxation of the people in respect to stamp duties. But he did not at all share this apprehension. On the contrary, while the duties on some of the higher transactions were increased, those on the lower, that is the great mass of transactions, were lessened: and, on the whole, the change was in favour of the people rather than of the State. So far, then, this Bill was characterized by that principle of equity which pervaded our legislation in this country.

Possibly the revenue under this head would rise hereafter (though that was far from certain). But if such should be the case, it would arise, not from

increased duties, but from the extended use of these documents; from the progress of trade; from the growing popularity of the administration.

He (SIR RICHARD TEMPLE) understood Mr. Cockerell to have proceeded on the principle of simplifying and re-adjusting the scale of duties; of rather lowering them on the whole; and of trusting to improved strictness of administration for compensation for any sacrifice of revenue that might result. In arranging this, regard had been given to the model of the English stamp law; local custom had been noticed; the requirements of the traders had been considered; and in prescribing penalties, endeavour had been made to render them as mild, and as little vexatious and inquisitorial, as might be compatible with due enforcement of the law.

On the whole he (SIR RICHARD TEMPLE) was sanguine that, when this Bill should have received all the emendation that might be suggested by the practical and professional knowledge of the Select Committee, it would conduce not only to the benefit of the State, but also to the convenience of the community; and would prove to be a worthy result of the labours of the Hon'ble mover Mr. Cockerell.

The Hon'ble MAHÁRÁJÁ SIR DIRG-BIJAY SINGH said that apparently the only object of this Bill was to define, with more clearness, the provisions of former Acts on the same subject, and so far it was a wise and judicious measure; but from the cursory glance he had been able to cast over the Bill, the stamp duty seemed to him to have been in several instances increased. He trusted therefore that the Committee to which the Bill was about to be referred would make such amendments as might be necessary to prevent such increase.

The Motion was put and agreed to.

EXPROPRIATION BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to consolidate and amend the law for the acquisition of land needed for works of public utility, said that, before he stated to the Council the reasons which had led the Government to the opinion that legislation on this subject was necessary, it would be convenient that he should state very briefly the nature of the existing law on the subject. The present law was contained in Act VI of 1857 and Act XXI of 1861, but the latter Act contained provisions, for his present purpose, of comparatively little importance; practically it might be considered that the law was contained in

Act VI of 1857. When the Local Government came to the conclusion that land was to be taken at the public expense for any public purpose, the first step was that a declaration was made to the effect that the land was required for that purpose under the signature of a Secretary to the Government or some other duly authorized official, and that declaration was taken as conclusive evidence that the purpose for which the land was needed was a public purpose. After such declaration had been made, the land must be taken; the Government could not draw back from the transaction. After the land had been marked out and measured, the Collector made an offer to the owner of the property of a sum which he thought suitable as compensation. If the owner agreed to the offer, the matter was disposed of; but if the offer was not accepted, unless the Collector and the proprietor of the land concurred in the appointment of a single arbitrator, the proprietor appointed one arbitrator and the Collector another, and the two together nominated a third. The decision of those three arbitrators was final, and the award made under the Act could be reversed or altered on no ground whatever, unless it should be decided by a Civil Court that there had been corruption or misconduct on the part of the arbitrators; and practically that was quite impossible to be proved. To all intents and purposes, therefore, the decision of the arbitrators was absolutely final.

Since the extension of railways and other great public works which had been going on to such a great extent during late years, the matter had become of much greater importance than it used to be, and frequent complaints had been made, especially in the Public Works Department, regarding the extremely uncertain manner in which compensation for land had been awarded. The Government had made various efforts to protect the interests of the public; it had called on the local authorities to take increased care in the selection of arbitrators, and had adopted other measures likely to protect the public interests; but practically no effectual relief had been obtained. MR. STRACHEY thought that the imperfections of the existing law would be best shown to the Council by a statement of some cases that had actually occurred within the last year or two. The first case to which he would refer occurred not long ago.

Some years ago in one of the stations of the North-Western Provinces, a piece of ground belonging to the Government was made over to a person who wished to build a house. The Government gave him a lease, at a low rent, for fifty years, renewable at his pleasure on the expiration of that term for fifty years more at the same rate. Adjoining this ground there was a piece of land which had been an old brick-field, and in a large portion of it there were irre-

gular pits and excavations, the result of the brick-making that had gone on there. After the lessee had built his house he made an application to the Government officers with the object of obtaining a lease of this adjoining ground. He represented that it was quite useless for building purposes, and that he only wanted it because, in consequence of the nature of the ground, nuisances were commonly committed upon it. Under these circumstances, and as the land could apparently be turned to no other purpose, he asked to be allowed to occupy it at one-third of the usual rent. This was agreed to, and he received a lease of the ground for fifty years renewable for fifty years more. Two or three months after this had been done, it appeared that the ground must be taken possession of for the Railway Company. The lessee at first consented to give up the land, but he subsequently declined to do so without payment of compensation. The Collector offered to pay Rs. 75 for the surrender of the lease, considering that it was unreasonble to propose to give more, since the lease had only been granted on the assumption, in accordance with the declaration of the lessee himself, that the ground was worthless. The lessee refused this offer, but said that he would accept Rs. 2,000 as compensation, or any other sum that the Board of Revenue might award. It was thought absurd to agree to pay Rs. 2,000 for property which, on the admission of the owner himself, must be almost valueless; and in consequence of the difference of opinion as to what sum ought to be paid, it was ordered that the amount of compensation should be determined by arbitration in accordance with Act VI of 1857. The award of the arbitrators gave to the lessee Rs. 47,400 for this piece of ground for which he had himself only asked Rs. 2,000, or anything that the Board of Revenue chose to give, and for which the Collector thought Rs. 75 a sufficient price. The other piece of ground on which a house had been built was also required for Railway purposes, and the value of this ground and house was determined at the same time by the same arbitrators. For the house the owner had asked Rs. 24,000. The award gave him Rs. 30,200. For the loss of the lease he had asked Rs. 5,000, or including the compensation for the other lease of which he had been speaking, Rs. 7,000. Instead of this sum the award gave him Rs. 71,200, or more than ten times the highest amount which he had himself ever demanded. If the Government had paid him every farthing that he had ever asked, both for the house and the land, he would have received Rs. 31,000. The sum awarded to him was Rs. 1,01,400. The arbitrators declined to give any reasons for their award, nor were they in any way bound to do so by the law. A reference was made to the Advocate General who gave as his opinion that "the public money had been absolutely thrown away," but that as the law stood there was no remedy. The money was accordingly paid.

He thought that this case was a sufficient illustration of the manner in which the present law sometimes worked. No one could say that the law was in a satisfactory state when such things as these were possible. Nor must it be supposed that the case which he had given was at all singular. Although it was certainly the strongest case that he had met with, it would be easy to give many other examples of a very similar character, but it was unnecessary that he should take up the time of the Council in quoting them in detail.

MR. STRACHEY did not for a moment intend to assert that in these cases the arbitrators had not usually acted in good faith, although he confessed that he could not believe that that had always happened; there was no doubt that the real foundation of the evil was not in the want of principle on the part of arbitrators, but in the fact that there was a complete absence in the existing law of any statement of the principles which ought to regulate the award of the arbitrators. Nor was the Government the only sufferer by the present state of the law in this respect. In consequence of the total absence of all guidance for the arbitrators in regard to the principle on which the amount of compensation in such cases ought to be paid, it might happen that private interests would suffer just as much as those of the Government. He did not think that there was any really great difficulty in laying down the main principles for regulating, to some extent at least, the price which ought to be paid for land taken for public purposes by Government, although no doubt there might be very considerable difficulty in applying those principles in detail. Thus, he thought that the law should clearly lay down that the price to be paid was not to be what he might call a fancy price; that it was to be the real *bonâ fide* market value of the property to be taken, with such margin in addition as would compensate the owner fully for any loss and inconvenience caused to him by the forced sale of his property: so also it would be right to make full allowance for injury done to the adjacent land by severing the land taken from the other property of the owner. On the other hand, MR. STRACHEY thought it clear that there were certain considerations which ought not to be taken into consideration in determining the price, although considerations of that kind had, he believed, been practically taken into account. Those matters were, first, the degree of urgency which led the Government to require the land, the disinclination of the party interested to part with the land, and (and this was a matter of much importance) no damages sustained by the owner ought to be taken into account, if it was damage of a kind which, if it had been caused by a private person, would not render such person liable to a suit: further it was obvious that no damage which after the time of the Government coming into possession was likely to be caused by the ex-

ecution of a particular work ought to be taken into account, though he believed that as a matter of fact such hypothetical damage had frequently been taken into consideration. Nor, again, was it reasonable to consider any increase to the value of the land which was likely to accrue from the execution of the work for which the land was needed, and it would also be reasonable to lay down that no compensation should be given on account of any improvement effected on the land by the owner with the deliberate intention of enhancing the compensation made under the Act. Again, MR. STRACHEY thought it would be clearly reasonable to provide that the owner of the land should always be called on to declare the price at which he was willing to dispose of his property, and that the Government should also declare the price which it was prepared to give. If the owner and the Government could not agree as to the amount of compensation, it would be right to say that in no case should the sum awarded be more than the price which the owner had asked, and that in no case should it be less than the amount which the Government had offered to give.

MR. STRACHEY believed the mere laying down of simple principles of this kind would alone go very far to remove the practical evils experienced under the existing law, but still he thought there could be no doubt that considerable alterations in the existing procedure were necessary. He had already given a sketch of the principal provisions of the existing law. It had been proved by experience that the plan of leaving absolutely, without any power of appeal under any circumstances, the decision of the amount of compensation to be paid to three arbitrators, was not satisfactory. A question had been raised by some authorities whether it was expedient to retain the system of arbitration at all, and whether it would not be better to refer such questions to the Civil Courts as ordinary suits. There could be no doubt that reference to the Courts would have the advantage of simplicity, and in cases in which the parties agreed to this course, it would be highly desirable to leave the determination of the amount of compensation to a Civil Court: the Court would in fact act as a single arbitrator between the Government and the owner of the land, but it seemed probable that, under ordinary circumstances and in the majority of disputed cases, this course would not be popular, and that it might be said that the subordinate Judges being servants of the Government would be biassed in favour of their masters. But MR. STRACHEY thought that the plan of treating cases of disputed compensation to some extent as if they were civil suits might be still adopted, and that the security of guarding all interests, both public and private, might be obtained. The Bill would be based on that principle.

It was proposed that disputed cases should be disposed of by the Judge of a Civil Court with the assistance of assessors, unless the parties should agree to leave the decision to the Judge alone; and in cases of difference of opinion between the assessors and the Judge, an appeal would lie to the High Court. It was proposed that, in the first instance, the Collector, as under the existing law, should make an offer on behalf of the Government: if that offer was accepted, the matter would be finally concluded and settled and the award would be filed in Court; but if the offer was not accepted, the Collector would make an application to the Court to determine the value of the land, and the Court would then proceed to enquire into the case very much as in an ordinary suit. If the parties preferred to leave the amount of compensation to the decision of the Court and have no arbitrators, the Judge would himself dispose of the case; otherwise the Court would call on the Collector and the owner of the land each to nominate an assessor to sit with the Judge to determine the value of the property proposed to be taken. The proceedings and consultations of the assessors would take place in Court before the Judge, and the Judge would decide the points of law that might arise. If the assessors were unanimous and the Judge agreed with them, the award would be final. If the assessors were not unanimous and the Judge agreed with the majority of them, the award would be final; but if the Judge differed from the assessors or the majority of them, there would be an appeal to the High Court from the decision of the Judge either by the Government or the owner of the land as the case might be.

The award of the assessors and of the Judge would distinctly declare the grounds on which the amount of compensation had been awarded, and when the award was confirmed by the Judge, it would become the judgment of the Court, and it would contain, in case of appeal to the High Court, all the information and detail necessary to enable the High Court to form a judgment in the case.

Mr. Strachey had now only given a rough sketch of the provisions which it was proposed to insert in the Bill, but they of course would require very careful consideration and elaboration in detail; he believed, however, it would be found possible to obtain a procedure which would protect both public and private interests and which would give satisfaction to all parties by providing for the settlement of disputes by a tribunal whose independence would be admitted by all. Whatever care might be taken to avoid delay, there was no doubt that the giving the power of appeal to the High Court would sometimes lead to greater delay than under the present system; but the advantage in many cases of getting the judgment of the High Court would be so great that, even if some delay should occur in the decision of disputes from this cause, he thought the advantage gained would be well worth the price paid.

In speaking of the procedure under the present law, MR. STRACHEY had omitted to mention one matter of some importance in which the law had been found to require amendment. As the law now stood, when a declaration had been once made by the Government under the Act, that a certain piece of land was required for a public purpose, even though it should turn out afterwards that the declaration had been made by mistake, and the land really was not required, and if this conclusion should be come to before any practical action whatever had been taken by the Government, still, having once made a formal declaration, it was impossible for the Government to draw back, even if the owner himself should concur with the Government in the desire that the land should not be taken. Government having begun the proceedings, must complete them. Very extraordinary cases had occurred in consequence of this provision of the law. He need not take up the time of the Council in stating these cases in detail; but in some of them, in consequence of the issue erroneously of a declaration that the land was wanted for a public purpose, the Government, although it had really done nothing whatever to actually take up the land and had interfered in no way whatever with any private right of property, had been forced to continue the proceedings and had been compelled to take land not wanted, and to pay large sums for no useful purpose whatever. Those provisions, as they now stood, gave practically no additional protection whatever to private property; while, on the other hand, they put in the hands of unscrupulous persons the means of making the Government pay heavily for errors committed by officers of Government, but which really caused no loss to any one. The Bill therefore proposed that the Government might withdraw at any time before taking possession of the land, being, however, liable to pay compensation for any damages sustained in consequence of the declaration that the land was wanted.

MR. STRACHEY had now given a sketch of the reasons which had led the Government to the conclusion that an amendment of the law was necessary. When the Bill was laid before the Council, it would require very careful consideration in all its details. He would now only add that the Executive Government did not desire to be invested with any powers beyond those which it possessed under the existing law. It asked for no arbitrary authority to interfere with private rights of property. It desired that, whenever it became necessary for the benefit of the public at large to interfere with private rights, the law should not only give protection to the interests of the public, but that, in all the proceedings taken, every possible consideration should be shown not only for the rights but for the convenience of the persons with whose interests

it had become necessary to interfere. The Government had in this matter no interest apart from the interest of the public, and in now proposing to alter the law, it desired to obtain every assistance which the public could give in enabling the legislature to arrive at correct conclusions. With this feeling the Government hoped that, when the time arrived for discussing the details of the Bill which it was proposed to introduce, the non-official Members of the legislature, in particular, would give to the Council the benefit of their assistance, and that they would take an active part in the settlement of the details of the measure that might be adopted.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for imposing Stamp Duties on certain instruments—The Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, and the Hon'ble Messrs. Gordon Forbes, Cowie, Shaw Stewart, Bullen and the mover.

The Council adjourned till the 18th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 11*th December* 1868.

Office Supdt. Govt. Printing.—No. 8317 L. C.—16-12-68.—160.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART moved that the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter be referred to a Select Committee with instructions to report in two months. He said that the Bill was introduced on the 3rd of April during the last Session of the Council; but in consideration of the importance of the measure and the late period at which he had introduced the Bill, he had suggested (and the Council adopted the suggestion) that the Bill should merely be introduced, and its reference to a Select Committee deferred. He had hoped to have been able this Session to refer the Bill to a Select Committee in the ordinary course, and to have brought it forward again in due course; but he regretted that it was impossible that this Bill should be dealt with in the ordinary way, for a despatch of the 21st of October last had been received from the Secretary of State, directing that the Bill should not be proceeded with in its present form. The Secretary of State had referred the Bill to the Indian Law Commissioners, with a request that they would submit their opinion on its provisions. The Commissioners did not give any opinion on the provisions of the Bill, but stated that at the present stage of their labours they thought it impossible for them to take the Bill into consideration, and that they could not consider the Code of

Criminal Procedure till they had completed the revision of the Indian Penal Code. The Secretary of State, while expressing his general concurrence with the opinion of the Law Commissioners, stated that there were many points in the Bill which did not affect any question of important principle, and which merely dealt with points of administrative detail: these there was no objection to take into consideration at once. MR. SHAW STEWART therefore proposed that if the Bill be now referred to a Select Committee they should take for their guidance the Despatch of the Secretary of State and turn their attention to the alteration of the Bill from being an amended Code of Criminal Procedure to make it an amending Act, excluding all points which came under the head of points of legal principle. He thought that every one must admit that great advantage would be gained from the Law Commissioners considering the Bill in the manner proposed, but there were two points which he hoped would be taken into consideration. If the Secretary of State had allowed the Bill to be proceeded with in the ordinary way, we should have been able to repeal the old Code of Criminal Procedure and its five amending Acts, and to substitute for them one new Code. Instead of which we should now have to add another amending Act to the statute book, and the law of Criminal Procedure would have to be sought for in seven Acts instead of in one Act. The Indian Law Commissioners held out no hopes of being able at any definite time to undertake the task of revising the Code; they said that they could not do so till they had considered and completed the revision of the Penal Code. MR. SHAW STEWART understood that the papers connected with the revision of the Penal Code had not even yet been put into the hands of the Indian Law Commissioners; there was therefore a prospect of considerable delay in their undertaking this important work. He thought the revision of the Code of Criminal Procedure was a matter of such great importance that he trusted the Commissioners would be induced to turn their attention to it as early as possible.

The Hon'ble MR. MAINE said, that His Excellency's Government was much indebted to the Hon'ble Mr. Shaw Stewart and to the gentlemen who had acted with him, for the pains they had bestowed and the intelligence they had shown in revising the Code of Criminal Procedure. He hoped that such pains and intelligence would not be ultimately thrown away. He trusted that the Indian Law Commissioners would undertake the revision of the Code at an early date, and, certainly, the Executive Government would do what it could to prevail on them to do so.

MR. MAINE ventured to say that the Commissioners would derive a not inconsiderable measure of assistance from the labours of his Hon'ble friend.

The Motion was put and agreed to.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE asked leave to postpone the Motion, which stood in the List of Business, that the Bill for the appointment of Justices of the Peace be referred to a Select Committee with instructions to report in six weeks. He said, there were some important papers on the subject which were expected from the High Court but which had not yet been received.

Leave was granted.

PRISONERS' EVIDENCE BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, said that in the present state of the law there existed no facilities for obtaining the evidence of prisoners in the Civil or Criminal Courts of this country. In the Presidency Towns, within the limits of their original jurisdiction, the High Courts of Judicature might issue a writ of *habeas corpus ad testificandum*, but beyond such limits the law made no provision for compelling or authorizing the person responsible for the safe custody of a prisoner detained in any jail to produce such prisoner for the purpose of giving evidence in a Civil or Criminal Court. Some years ago the Bengal Government, upon a reference being made on this subject, issued a general order prohibiting compliance with the requisition of any Civil Court for the attendance in such Court as a witness or a party to a suit of a prisoner confined in jails, unless when the Government had granted its special sanction, to be applied for only on good and sufficient grounds in each case. Acting on this prohibition, officers in charge of jails had declined to send prisoners before Civil Courts as witnesses, and their refusal had in some cases led to the issue of a commission by the Courts for the examination of the prisoner, whose personal attendance to give evidence could not be obtained.

As, however, the conditions under which Civil Courts might obtain the examination of persons by commission were not ordinarily applicable to the case of prisoners confined in jails, such commissions were informal and their execution could not be legally enforced. It resulted that parties to suits had no certain means under the existing law and practice of procuring the attendance of prisoners in the Courts as witnesses, however material their evidence might be to the issue of such suits, and that the due administration of justice was thereby prejudiced.

In consequence of a reference from the Inspector of Jails showing the present unsatisfactory state of the law in this respect, the Government of Ben-

gal consulted the High Court as to the propriety of relaxing the rule by which the evidence of prisoners in confinement was practically excluded from civil and criminal cases. The High Court, concurring in the opinion of the Lieutenant Governor of Bengal, at his instance framed certain rules for procuring the attendance of prisoners as witnesses in the Civil and Criminal Courts, but considered that legislation was required to secure the necessary powers for their enforcement.

A Bill for the attainment of this object was now before the Legislative Council of the Lieutenant Governor of Bengal. The question involved in the proposed legislation was, however, obviously one of imperial interest.

The inconvenience and injury to suitors resulting from the absence of any legal provision for obtaining the evidence of prisoners in jails, when such evidence was material to the issue of their suits, must be experienced in other parts of the country no less than in Bengal; and in asking leave to introduce this Bill he was only anticipating the necessity for providing a remedy for the present state of things which the exigency of the case must sooner or later force upon the attention of the legislature. He had only to add that the proposal to transfer legislative action in the matter to this Council was made after communication with the Lieutenant Governor of Bengal, and with His Honour's assent; and that before any attempt was made to pass the Bill, ample opportunity would be given for communication with the various Local Governments, both as to the practice now obtaining in the territories subject to their control, in regard to the evidence of prisoners in Civil or Criminal Courts, and as to the applicability of the contemplated provisions of the Bill to the circumstances of those territories.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter—The Hon'ble Messrs. Maine, Strachey and Cockerell, the Hon'ble Sir George Couper and the Hon'ble Mr. Gordon Forbes and the Mover.

The Council adjourned till Monday the 21st December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 18*th December* 1868.

Office Supdt. Govt. Printing.—No. 8573 L. C. —19-12-68.—190.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 21st December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K.C.S.I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE moved that the Bill for the appointment of Justices of the Peace be referred to a Select Committee with instructions to report in a month. He said that it was scarcely necessary to state to the Council that the principal duty of Justices of the Peace in India was to investigate charges against European British subjects, to commit them, if necessary, to the High Courts, and to impose fines upon them for violent assaults under the Statute 53 George III, c. 155, s. 105 and the Act No. VII of 1853. Until a comparatively recent period, commissions of the peace issued from the High Court to which the European British subject was committable. Thus, Justices of the Peace in the Presidency of Bombay, and the Native States subordinate to it, were commissioned by the High Court at Bombay. So also with Madras. Over all the rest of India commissions to Justices issued from the High Court at Fort William in Bengal. The system was

sufficiently inconvenient, for commissions of the peace had to go from Calcutta to such places as Mysore and Coorg, and committals from those places were to the High Court at Fort William. Quite recently, however, great changes had been made in the amenability of British subjects to Indian Criminal Courts. A new High Court had been established in the North-Western Provinces, a Chief Court at Lahore, and two Recorders' Courts in British Burma. Further, under Statute 28 Vic., cap. 15, power was given to the Governor General in Council, by executive order, to distribute all India, British and Native, between the various High Courts for the purpose of committing British subjects to those Courts. A notification had issued effecting such distribution with reference to facilities of communication, whether consisting in proximity or in the existence of new roads and railways. But the law as to Justices of the Peace remained as it was. Commissions of the peace issued from the Calcutta Court to Mysore and Coorg. But under the Statute and notification abovementioned, European British subjects were committable from these places to the High Court at Madras. Nor was this merely an anomaly. For doubt existed whether a High Court could try a British subject committed to it by a Justice of the Peace not commissioned by itself. It was a point upon which the learned Judges differed. The Bill was drawn to remove this doubt, and to cause commissions of the peace to issue from the High Court to which British subjects were committable from the various parts of British and Native India. Beyond this it did not go, and was intended to innovate as little as possible. But no one employed in framing such a Bill could help wondering why such a circuitous mode of appointment was necessary. The High Courts had no discretion. They issued commissions of the peace at the instance of the Governor General in Council or of the Local Government. The intervention of the High Courts seemed therefore an unnecessary step in the process. It had not, however, been proposed at first to make any change since the privilege, if privilege it were, had from the first belonged to the Courts, and it was one which did no great harm. MR. MAINE was, however, happy to say that a Minute had been received from Sir Barnes Peacock, concurred in by all the Judges of the High Court at Fort William, in which it was proposed that commissions of the peace should no longer issue to the High Courts, but that Justices of the Peace should be directly gazetted by the Local Government. There was reason to believe that the learned Chief Justice of the High Court of the North-Western Provinces took the same view. The High Court Judges at Madras and Bombay, while approving of the Bill, had not noticed, but MR. MAINE was sure that they would not object to the recommendations of the Calcutta High Court. He thought that the Select Committee would do well to adopt this suggestion,

which would have the effect of greatly simplifying the Bill and of establishing a more convenient system.

The Motion was put and agreed to.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble MR. STRACHEY introduced the Bill for the maintenance of the Rural Police in the North-Western Provinces, and moved that it be referred to a Select Committee with instructions to report in a month. He said that, when the Rural Police Act (II of 1865) for the North-Western Provinces was enacted, the provision in force in respect of Khálsá estates was made applicable to Muáfí and Nazráná villages. The municipal cess, which was a percentage on the Government revenue fixed at the Settlement in discharge of the obligation of the proprietors for the entertainment of the Village Police, was fixed at 2¾ per cent. of the jama; and that amount was entered in the Act as being leviable from Muáfí and Nazráná estates. The late Lieutenant Governor of the North-Western Provinces, however, increased the former rate on Khálsá estates to 7¾ per cent. on the jama. This he had authority to do, and he found that the increased rate was absolutely necessary, because the sum formerly paid was quite inadequate to the efficient maintenance of the village constabulary. But as the Act provided that only 2¾ per cent. should be levied on Muáfí and Nazráná estates, the consequence was that the payments for the Police in Muáfí and Nazráná estates were very much smaller than in Khálsá estates; it was therefore proposed by the Lieutenant Governor to amend the Act for the purpose of making the burden in Khálsá and Muáfí estates the same.

The Act of 1865 had already been amended by Act II of 1866: it seemed undesirable to pass another amending Act, and consequently it was proposed to take the opportunity of throwing the whole law on the subject into one Act. With the exception just noticed, although there were two or three slight alterations in the present Bill, there was really nothing of importance with which MR. STRACHEY need trouble the Council: to all intents and purposes the new Bill simply consolidated and re-enacted the existing law.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that the Hon'ble Sir George Couper and the Hon'ble Mahárájá Sir Dirg-Bijay Singh be added to the Select Committee on

the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for the appointment of Justices of the Peace—The Hon'ble Messrs. Cockerell, Gordon Forbes and Shaw Stewart and the Mover.

On the Bill for the maintenance of the Rural Police in the North-Western Provinces—The Hon'ble Messrs. Maine and Cockerell, the Hon'ble Sir George Couper, the Hon'ble Mahárájá Sir Dirg-Bijay Singh and the Mover.

The Council adjourned till Monday the 28th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 21*st December* 1868.

Office Supdt. Govt. Printing.—No. 8669 L. C.—23-12-68.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 28th December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble D. Cowie.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY moved that His Honour the Lieutenant Governor of Bengal be added to the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

The Motion was put and agreed to.

The Council adjourned till Monday, the 4th January 1869.

CALCUTTA,
The 28th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Office Supdt. Govt. Printing.—No. 8810 L. C.—28-12-68.—180.

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